(1)

Supreme Court, U.S.
FILED

AUG 3 - 2005

OFFICE OF THE CLERK

Docket No.: 05 256

SUPREME COURT OF THE UNITED STATES

EDWARD RONWIN, Petitioner,

v.

ALLSTATE INSURANCE CO., et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Edward Ronwin
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Petitioner, pro se

QUESTIONS PRESENTED FOR REVIEW

1. Is it unconstitutional for the lower federal courts to conduct Star Chamber proceedings in cases within their jurisdiction?

2. Can judges of the United States support and approve criminal conduct that record evidence proves occurred beyond cavil or doubt?

LIST OF ALL PARTIES

EDWARD RONWIN, Petitioner, (hereinafter, RONWIN)
Respondents:
ALLSTATE INSURANCE CO., (hereinafter, ALLSTATE)
STATE FARM MUTUAL AUTO INS. CO., (hereinafter, FARM)
DAVID LAWSER, (hereinafter, LAWSER)
TERRI RENE SNYDER, (hereinafter, SNYDER)
CITY OF FORT COLLINS, CO, (hereinafter FORT COLLINS)
HEIDI NASH, (hereinafter, NASH)

OTHER ABBREVIATION:
District Clerk's Docket items, (DOC.)

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

No opinions and orders are published.

BASIS FOR JURISDICTION IN THIS COURT

The date of the Order and Judgment of the U.S. Court of

Appeals, 10th Cir., sought to be reviewed is June 7, 2005.

The date of the Order of the U.S. Court of Appeals, 10th Cir., denying RONWIN's Petition for Rehearing En Banc or by Panel is June 28, 2005.

The statutory provision conferring jurisdiction on this Court is 28 U.S.C. § 1254(1).

28 U.S.C. § 2403(b) may apply. Therefore, the Attorney General of Colorado will be served herewith. It does not appear that either the Dist. Ct. or the Ct. of Appeals certified to the Colorado Attorney General the fact that the constitutionality of a Colorado statute was drawn into question and that the constitutionality of the interpretation of another Colorado statute was drawn into question.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

United States Constitution:
Art. III,§1; 1st; 5th; 7th and 14th Amendments

United States Statutes:
18 U.S.C.§1341;
28 U.S.C.§§ 1254(1),1331,1332,1343,1367,2403(b);
42 U.S.C.§ 1983

Colorado State Statutes:
CRS 10-4-607
CRS 16-3-202(4)
CRS 18-8-111(1)(C) and (2); 18-9-111(1) and sub§(f)
CRS 42-4-1409

STATEMENT OF THE CASE

1. After being subjected to attempted extortion by ALLSTATE and, separately, by FARM, which effort is part of a similar racket these Respondents engage in, and after SNYDER enraged former policewomen NASH with deliberate lies and setting NASH to act pursuant to an unconstitutional interpretation of CRS 18-9-111(1) taken with sub§(f), and to deny due process and equal protection to RONWIN and sullying RONWIN's character, suit was brought against the Respondents. After dismissal of the case in the Dist. Ct. timely appeal was taken to the Ct. of Appeals. At no time from the filing of the complaint to and through the denial of RONWIN's Petition for Rehearing in the Ct. of Appeals, was any oral argument or physical appearance by the parties in either the Dist. Ct. or the Ct. of Appeals allowed; and the jury demanded got nowhere near the District courthouse.

2. Jurisdiction in the Dist. Ct. was based upon the following:

As to ALLSTATE and FARM: 28 U.S.C. §§ 1331, 1332; As to LAWSER: 28 U.S.C. § 1331 and 1367; As to SNYDER: 28 U.S.C. §§ 1331, 1343, 1367; As to FORT COLLINS and NASH: 28 U.S.C. § 1343. (DOC.1,pp.1-2).

REASONS TO GRANT THE WRIT

I. AS TO QUESTION 1:

Websters 3rd Int'l. Dictionary, Merriam-Webster, Springfield, MA, p.2226 (1986) defines a Star Chamber as: "A court existing in England from the 15th Century to 1641 that exercised wide civil and criminal jurisdiction under rules of procedure well suited to the purpose of absolutist sovereigns"

Random House Dict. of the English Language, 2nd Ed., unabriged, N.Y. p. 1858 (1983), defines a Star Chamber as: 1. "A former court of inquisitorial and criminal jurisdiction.. that sat without a jury and...became noted for its arbitrary methods.." (emphasis added).

Lastly, The Oxford English Dict., 2nd Ed., Vol. XVI, Clarendon Press, Oxford, p. 529 (1989) states: "..a proverbial type of an arbitrary and oppressive tribunal.."

If in the Star Chamber the parties at least appeared before a judge(s), that would be an improvement upon the situation in this case, where no appearance before any judge at any time was permitted in the Dist. Ct. and the jury demanded, (D0C.1 p.1), got nowhere near the Dist. courthouse. Also, no appearance was allowed before the Ct. of Appeals. In addition, no motion filed by RONWIN was ever granted.

The handling of this case is not different from the procedures of the "arbitrary and oppressive" Star Chamber. While statistics are not available--and ought to be required by this Court to be kept by the lower courts--it has been becoming more and more frequent that cases are being arbitrarily dismissed by "trial by motion" where the parties have no opportunity to expand on their positions and/or to obtain necessary discovery, and to correct initial views formed by the judges or magistrates because oral argument is denied. That, for whatever reason, case calendars may be getting longer is not justification to deny justice to any litigant.

The arbitrary activity complained of herein offends several provisions of the U.S. Constitution. Due Process and Equal Protection of the 5th and 14th Amendments are denied. Due

Process because one gets no chance to fully present and explain one's position or to acquire through discovery elements in support. Equal Protection because denial of oral argument to some litigants while granted to others is inherently unfair. But, the matter is worse! The arbitrary activity offends the right to "petition [the courts] for redress of grievances," 1st Amend., U.S. Const., (DOC.24,pp.1-2). That right presumes that one will be able to state one's case fully and completely which is not generally possible in the confined arena of a writing; rather, in the least, oral argument is needed to make certain that one's position is fully understood. The arbitrary activity also offends the 7th Amend., U.S. Const. which provides for trial by jury in civil actions were the amount exceeds $20.00., (DOC.24,pp.1-2). The right to a jury, to at least try the facts, is trumpted as a primary value of democractic jurisprudence. Trial by motion, where there is no opportunity to correct possible erroneous impressions formed by the judge through oral, face-to-face argument, destroys the right to jury to find the facts. What is being passed off as a just disposition of cases is trial by dispositive motions where the objective is becoming, not the doing of justice, but who gets attorney's fees, which is corrupting the American Rule that gives the poor and middle classes the means to get a reasonable redress of grievances.

Although arising from a welfare case, this Court in Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 1020 (1970), (Appellant's Opening Brief @ 14), wrote: "The fundamental requisite of due process of law is the opportunity to be heard..The hearing must be at a meaninful time..and manner." Oral argument on dispositive motions is little different from welfare, or other types of hearings, and the hearings which are "fundamental requisites of due process" are oral confrontations of the parties before a judge. Deny

oral argument, where requested, and you deny due process. (Appellant's Response to Order to Show Cause, pp.12-14).

In this case, all four constitutional rights have been violated and both the District and Appeals judges, and the magistrate judge, have supported and approved criminal conduct by four of the six Respondents, as considered in Question 2, below:

II. AS TO QUESTION 2:

In the Ct. of Appeals Order & Judgment, June 7, 2005, p.2, the Court ordered RONWIN to show cause "why [RONWIN] should not be sanctioned for filing a frivolous appeal,"(Appenix, pp. 2-3).

Using record evidence RONWIN demonstrated that the Panel members, by their decision were supporting and approving criminal activity by several Respondents, (Responce to Order to Show Cause, pp. 3-6; 8-10):

The evidence of record proves, beyond cavil or doubt, that, ALLSTATE's policy expired on May 23, 2002, (DOC.44, Exhs 2 & 3), and FARM's policy commenced on May 23, 2002 and itself expired on Nov.23, 2002, (DOC.25,Exh.2), and RONWIN's policy with AUTO-OWNERS INS. CO., commenced on Nov.23, 2002, (DOC.25, Exh.3).

Two separate RICO claims were presented to the courts below. One against ALLSTATE; the other against FARM, LAWSER and SNYDER. Respondents' actions in each claim are virtually identical and were treated as "one," (Response to Show Cause Order, pp.8-10).

ALLSTATE's "Cancellation Notice", (DOC.44,Exh.1), re-

fers to a date, (June 23, 2002), when no policy was in existence between RONWIN and ALLSTATE, (see 4th full ¶, p. 10), and the notice, which on its face demands monies not due to ALLSTATE and threatens "collection", cancelled nothing and hence was a sham and must have been known to be such to ALLSTATE. Likewise, FARM's agent demanded $216.58 on Dec. 9, 2002, (DOC.26,p.2), which FARM must be held to know was not due. That was followed, despite assurances by LAWSER that RONWIN would not be further harassed, with an "Expiration Notice", (DOC.26, Exh.6), which was labelled a "billing statement" by JERRY SMITH, Regional Director for FARM, (DOC.24, Exh.4, 3rd ¶ and p.15). The notice reached RONWIN on Dec. 11, 2002 and again demanded $216.58, and carries, as with all billings allegedly not paid, the threat that one's credit rating will be besmirched, (DOC.26, pp.11-12). The "Expiration Notice" attached to no policy in existence between RONWIN and FARM, (see 4th full ¶, p. 10 above), and was a sham; and must have been known to be such to FARM, LAWSER and SNYDER.

Thus, both ALLSTATE and FARM are positioned as sending fraudulent notice to former insureds threatening court actions or implied besmirching of credit standing, and demanding, without right monies from former insureds that they know are not due to them. In other words, an extortion process--a criminal procedure. The actions also amount to both civil and criminal fraud, including mail fraud, 18 U.S.C. § 1431.

Why on earth do ALLSTATE and FARM engage in such activity? The answer is (i) they make money out of it; and (ii) they are getting away with it thanks to judgments such as in the courts below.

How do ALLSTATE and FARM make money out of the criminal fraud and extortion process?

The State of Colorado requires auto owners whose vehicles "hit the road" to carry minimum amounts of certain types of insurance, (DOC.1,pp.5-6,¶'s21-25,DOC.1,pp.10-11,¶'s47-51), (Appellant's Opening Brief @ 26-32). The Colorado statute is: CRS § 42-4-1409.

As told to RONWIN by SMITH, FARM automatically generates the "Expiration Notices" to insureds who cancel their policies after the canceled policies expire, (DOC.26, p.7, last ¶, and RONWIN Affidavit, p.1, ¶ 2). ALLSTATE admits the practice in the letter written by KATHY THOMSON, Customer Care Manager in Denver, CO, for ALLSTATE. THOMSON writes, (DOC.44,Exh.7,p.2,last ¶): "..It is Allstate's company procedure to request proof of insurance from another carrier when backdating a termination request. I understand it is your prerogative not to provide the information." If the information, which is none of ALLSTATE's business is not provided, they send the false "Cancellation Notice."

The "backdating [of] a termination request" is nonsense. RONWIN did not "request;" he ordered that ALLSTATE's policy would not be renewed and would expire by its own terms. RONWIN must have so acted since his FARM policy had to be arranged before ALLSTATE's policy expired so that the FARM policy took effect, as it did, on the instant ALLSTATE's policy expired, as shown by the evidence discussed above at p. 10, 4th full ¶.

When ALLSTATE's false "Cancellation Notices" and FARM's false "Expiration Notices" reach former insureds,

with their demands for monies not owed, and which both Respondents know the monies demanded are not due them, we may expect the following reactions: Former insureds with some legal or business experience, or high intelligence will likely see through the fraud and reject it outright. However, this nation has millions of persons with average or below average intelligence who lack legal or business experience or even knowledge of where to get help, and who sometimes have language difficulties. Such persons may well be taken in by fear of exposure to State authorities if they fail to obtain replacing insurance, or, even if they have replacing insurance, may come to think they actually owe the monies demanded by ALLSTATE and FARM, even though their policies have expired.

However one slices it, the issuance of these false "Cancellation Notices" and false "Expiration Notices" accompanied by outright or implied threats, and demand for monies not due, and known not to be due by these Respondents, constitutes attempted, and at time successful extortion, as well as civil and criminal fraud, including mail fraud, 18 U.S.C. § 1431, In short, a racket.

ALLSTATE and, separately, the FARM Respondents raised an alleged defense of absolute immunity, based on CRS § 10-4-607, which reads:

> Immunity. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or against any insurer, its authorized representatives, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to the reasons for cancellation or nonrenewal [expiration notices], or for any statement made by any of them

> in any written notice of cancellation or notification of reason for non-renewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information with respect thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith. (bracketed comment added).

There are two reasons why SNYDER, LAWSER, FARM and ALLSTATE are not covered by the terms of CRS § 10-4-607:

(i) Since there were no policies in existence, ALLSTATE's "Cancellation Notice", and, separately, FARM's "Expiration Notice" canceled nothing nor caused anything to expire. The statute contemplates valid cancellation notices and non-renewal notices, not false notices, (Appellant's Opening Brief @ 41-43; DOC. 26 @ 12-13 and DOC.44 @ 5-6).

(ii) CRS §10-4-607 is surely unconstitutional, as argued in Appellant's Reply Brief @ 13-14. In Harlow v. Fitzgerald, 457 U.S. 800, 807, 102 S.Ct. 2727, 2732 (1982), this Court held that only government "...officials whose special functions or constitutional status requires complete protection from suit are granted 'absolute immunity'..," (judges, legislators, prosecutors and certain Executive Branch officials with adjudicative functions, and the President of the U.S.). "...for executive officials in general, however, our cases make plain that qualified immunity represents the norm..." "... we held that a governor and his aides could receive the requisite protection from qualified immunity..." Hence, absolute immunity, which is what the language of the Colorado statute clearly confers despite the lack of the word, "absolute", (as recognized in the Recommendations of the

magistrate judge,(See Appendix, 2nd ¶, p.43)), to the Commissioner of Colorado's Insurance Division is unconstitutional, as most certainly is the blanket grant of absolute immunity to insurance companies, agents, employees, etc., who are not, by any interpretation, "government officials." Moreover, only the Commissioner would be entitled to qualified immunity, per Harlow, and certainly not the rest of the parties and persons named in the statute.

The RICO claims against the four Respondents were dismissed. Thus, two criminal acts of attempted extortion and civil and criminal fraud, which included mail fraud, are supported and approved by the judgment of the District Court and that of the Ct. of Appeals, and by the Recommendations of the magistrate judge.

Likewise, a third criminal act is supported and approved by the judgments below and by said Recommendations.

RONWIN argued that SNYDER, acting for herself, LAWSER and FARM told deliberate lies to Officer NASH, (DOC.1 @ 12-13, ¶58), who shouted at RONWIN and refused to hear RONWIN's view of the matter despite requests that NASH do so. Thereby, RONWIN's rights to Due Process and Equal Protection were violated by NASH with SNYDER's help, (DOC. 26, p. 21).

The comments by which SNYDER enraged NASH against RONWIN, and which may not include all of SNYDER's comment to NASH, are presented in NASH's Police Report, (DOC.25, Exh.1,p.3,¶ 1). SNYDER's comments are considered, one by one, in the following; note first that the Police Report is dated Dec.16, 2002, and that FARM's policy ended on Nov. 23, 2002, (p.10, 4th full ¶, above); hence, no

policy was in existence when SNYDER spoke to NASH.

Comment 1: "...the business [FARM] had sent a termination letter to Mr. Ronwin because he had not paid for current insurance." (italics added). Lie. As just above, no insurance policy was in existence when the "letter" [Expiration Notice] which notes that it was prepared on Dec. 6, 2002, (DOC. 25, Exh. 6), was sent to RONWIN. There was nothing to terminate!

Comment 2: "Ronwin became upset at the letter.." Lie. How could RONWIN become upset at the alleged termination of a non-existent policy when, as above, p.10 and below @ Comment 3, it was RONWIN who ordered the termination and had a policy in place with AUTO-OWNERS INS. CO., on the date that the FARM policy expired by its own terms? What RONWIN was angered about was that LAWSER assured RONWIN that if RONWIN did not renew his FARM policy, RONWIN would not be badgered nor harassed with demands for money not due or otherwise.

Comment 3: "By mutual agreement, the company terminated [RONWIN]." Lie. As noted above, SMITH's letter, (DOC.25, Exh.4, 2nd ¶) admits that RONWIN told LAWSER that he would not be renewing his policy with FARM. There was no "mutual agreement" and it was RONWIN who solely did the "termination."

Comment 4: "Ronwin wished to be terminated." Partially true; partially false. RONWIN had no desire to continue with FARM's policy; however, no action was needed to terminate the policy, which expired by its own terms.

The falseness of Comments 1, 2 and 3 is absolutely proven

and as the comments were made to a Police Officer, a violation of CRS § 18-8-111(1)(C) occurred, which is a Class 3 misdemeanor, CRS § 18-8-111(2), (DOC.26 @ 20); Appellant's Opening Brief @ 44). Furthermore, lying to a Police Officer is not "good faith" reporting and is a violation of CRS § 16-3-202(4), (Appellant's Opening Brief @ 44).

These criminal comments caused NASH to refuse to hear RONWIN's view of the matter. Chief DENNIS HARRISON of the FORT COLLINS Police agreed with RONWIN that when two parties contend over an issue involving the Police, and the circumstances do not call for immediate physical action by the Police, the officer on the scene has a duty to hear each party's view of the matter, (DOC 25 @ 6-7; Appellent's Opening Brief @ 47).

NASH actions were partially dictated by the unconstitutional interpretation of CRS § 18-9-111(1), taken with sub§(f), which will receive attention subsequently herein. NASH's crediting of SNYDER's lies, refusal to hear RONWIN's view of the matter, (DOC. 24, @ 11), and shouting, which Chief HARRISON admitted to RONWIN that he had watched, (DOC. 24, @ 7), indicated a taking of sides and an irrational approach since shouting was (i) utterly unnecessary, (ii) insulting and (iii) additional evidence of approaching the matter in bad faith. Also, by adhering to the above identified statute, NASH interferred with RONWIN's legitimate purpose to bring about a cessation of his being harassed by FARM, LAWSER and SNYDER, (DOC. 24, Exh.1, p.3); threatened RONWIN with arrest, (DOC.24, Exh.1,p.3); and falsely stated in her report that RONWIN refused to quit calling LAWSER's office, (DOC. 1, @ ¶ 60). NASH's conduct, aided by SNYDER, constituted a denial of RONWIN's Due Process and Equal Protection rights and

gave rise to a viable claim which the jury demanded by RONWIN had a right to determine, (DOC. 1, @13-14, ¶s 59-61;Appellant's Opening Brief, pp. 10-16).

Thus, a serious and viable claim was tossed out without justification or justice; and both the Ct. of Appeals and the Dist.Ct, and the magistrate judge supported and approved the criminal act of SNYDER by their judgments.

NASH claimed qualified immunity. Such immunity follows a police officer who properly performs his or her duty. Denial of a citizen's U.S. Constitutional rights, as discussed above, is not "good faith" conduct of a FORT COLLINS police officer's duty, (DOC. 24 @ 4-5; 8-16; Appellant's Opening Brief @ 45-47). NASH's police report contains SNYDER's lies but not one word of RONWIN's position which NASH refused to hear, while shouting, which Chief HARRISON admitted to RONWIN he had witnessed, (DOC. 24 @ 7). That refusal to hear RONWIN's side, which Chief HARRISON admits was improper, uncoupled NASH from her immunity, as did her other actions, supra.

RONWIN explained to the Ct. of Appeals that no judge of the United States should ever promulgate an official judgment, as done by its Order and Judgment, which supports and approves criminal acts. Such conduct by a U.S. judge comes within the rubric of "bad behavior" in the context of the "good behavior" requirement for the conduct of U.S. judges in the exercise of their duties under Art. III, § 1, of the U.S. Const. Such bad behavior merits removal from office; (Response to Order to Show Cause, pp. 5-6).

The reaction of the Appellate judges to the aforesaid remarks was to discharge the show cause order, but they

nevertheless continued their support and approval of the three criminal acts by denying the Petition for Rehearing; (Appendix, pp. 25-26).

In addition to the denial of the RICO claims and the civil rights claim against SNYDER, NASH and FORT COLLINS; and the allowance of an unconstitutional immunity statute to stand, and the support and approval of three criminal acts, the Dist.Ct. and Ct. of Appeals' judgments left stand an absurd and unconstitutional interpretation of a telephone harassment statute:

CRS § 18-9-111(1) states: "A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:"

Sub§(f) of the statute states: "Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation." (emphasis added).

Subsections of the Act between §1 and sub§(f) have no effect on the interaction between §1 and sub§(f).

As argued in Appellant's Opening and Reply Briefs, and below, the contention of the Larimer County legal counsel, which the FORT COLLINS City Counsel told RONWIN he would have to follow, (DOC. 25 @ 11-12; Appellant's Opening Brief @ 48-49), is that, (DOC. 25 @ 9-11):

Those without a legitimate reason to call violate the statute if they call more than once. Those with a legitimate reason to call violate the statute if they call more than once. NET RESULT: the exception, i.e., possession of a legitimate

reason to call is ruled out of the statute by opinion of legal counsel. However, legal counsel for any political entity or agency does not have the right to remove the exemption from the statute. Only the Colorado Legislature has that right!

Furthermore, as noted in Appellant's Reply Brief @ 9-10, this Court in U.S. v. Laub, 385 U.S. 475, 487, 87 S.Ct. 574, 581 (1967), held:

> Crimes may not be created by inference. They may not be constructed nunc pro tunc. Ordinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach...We may not convict a citizen for exercising a privilege which the State clearly had told him was available to him...

The ensuing comment is comprehended under both questions presented, and exemplifies actions below:

The magistrate judge labelled RONWIN's suit as a "rather silly case," (See Appendix, 3rd p.72). The record evidence, (See pp.15-17 above), establishes beyond cavil or doubt that SNYDER lied to NASH and thereby unquestionably violated CRS 18-8-111(1)(C). Yet, despite the absolute evidence of record, the magistrate judge wrote of SNYDER's conduct as follows, (See Appendix, p. 58):

> SNYDER did nothing more than to telephone the police with a complaint about plaintiff. The mere furnishing of information to police officers does not constitute joint action under color of state law which renders a private citizen liable under §§ 1983 or 1985. Benevidez v. Gunnell, 722 f.[sic]2d

615 (10th Cir. 1983)...For these reasons, I will recommend that plaintiff's § 1983 claim against her in his Eighth Cause of Action be dismissed.

When it becomes "silly" to complain to a U.S. court about violations of criminal law, and the irrefutable evidence of such violations is tossed aside with innocuous nonsense amounting to the support and approval of criminal conduct, the quality of justice in this nation is greatly diminished and with it the quality of our democracy; for, if democracy means anything, it means fair and equitable justice for all.

CONCLUSION

RONWIN suggests that the answer to Question 1 is that it is unconstitutional for the lower courts to conduct Star Chamber proceedings in cases within their jurisdiction; and that the answer to Question 2 is that judges of the United States must not support and approve cirminal conduct that record evidence proves occurred beyond cavil or doubt.

Edward Ronwin, Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

EDWARD RONWIN, (Filed June 7, 2005)

Plaintiff-Appellant, No. 04-1412
(D.C.No.03-N-1528(OES))
v. (D.Colo.)

ALLSTATE INSURANCE COMPANY, an Illinois corporation; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation; DAVID LAWSER; TERRI RENE SNYDER; CITY OF FORT COLLINS, a municipality; HEIDI NASH,

Defendants-Appellees.

ORDER AND JUDGMENT

Before BRISCOE, ANDERSON, and BRORBY, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.R.

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments;nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir.R. 36.3.

36.3.
App.P. 34(a)(2); 10th Cir.R. 34.1(G). The case is therefore ordered submitted without oral argument.

Edward Ronwin, appearing pro se, appeals from the district court's order granting the appellees' motions to dismiss and denying his motion for sanctions. The district court determined that Allstate Insurance Company, State Farm Mutual Automobile Insurance Company, David Lawser and Terri Rene Snyder (collectively "Insurance Defendants") were entitled to immunity from Ronwin's state law claims under Colo.Rev.Stat. § 10-4-607 and that Ronwin had failed to state a claim on his Racketeer Influenced and Corrupt Organizations Act (RICO) claim against the Insurance Defendants and his 42 U.S.C. § 1983 claim against defendants Snyder, Heidi Nash and the City of Fort Collins.

We review de novo a district court's dismissal for failure to state a claim under Fed.R.Civ.P. 12(b)(6). Sutton v. Utah State Sch.for the Deaf & Blind, 173 F.3d 1226, 1236 (10 Cir. 1999). We review for abuse of discretion the district court's denial of a motion for sanctions under Fed.R.Civ.P. 11. Burkhart ex rel.Meeks v. Kinsley Bank, 852 F.2d 512, 515 (10th Cir. 1988). Having reviewed the briefs, the record, and the applicable law pursuant to these standards, we conclude that the district court correctly decided this case. We therefore AFFIRM the judgment for substantially the same reasons stated in the district court's order dated September 30, 2004 (adopting the magistrate judge's recommendations dated September 29, 2004). Ronwin's Motion for Permission to Include Two Items in the Addendum of Appellant's Opening Brief is DENIED. Pursuant to our authority in Fed.R.App.P.38, we ORDER Ronwin to SHOW CAUSE in writing within twenty days of the date of this

filing a frivolous appeal.

Entered by the Court

Stephen H. Anderson
Circuit Judge

(Note: Judge Anderson's name appears in the original in type, but he did not sign the Order and Judgment.)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

EDWARD RONWIN,

Plaintiff-Appellant, No. 04-1412

v.

ALLSTATE INSURANCE COMPANY, an Illinois corporation; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation; DAVID LAWSER; TERRI RENE SNYDER; CITY OF FORT COLLINS, a municipality; HEIDI NASH,

Defendants-Appellees.

ORDER
Filed June 28, 2005

Before BRISCOE, Circuit Judge and ANDERSON, and BRORBY, Senior Circuit Judges.

BRORBY, Senior Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied

The panel ordered the plaintiff to show cause why he should not sanctioned (sic). After consideration of the response filed by plaintiff, the order to show cause is discharged.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: (signed) Audrey F. Weigel
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Edward W. Nottingham

Civil Action No. 03-N-1528(OES)

EDWARD RONWIN, Filed Sep 30, 2004

Plaintiff
v.

ALLSTATE INSURANCE COMPANY, an Illinois corpora-

INSURANCE COMPANY, an Illinois corporation, DAVID LAWSER, TERRI RENE SNYDER, CITY OF FORT COLLINS, COLORADO, a municipality and HEIDI NASH,

Defendants.

ORDER DISMISSING CASE WITH PREJUDICE

This matter is before the court on motions to dismiss plaintiff's complaint. The court has previously referred the case to a magistrate judge, authorizing the magistrate judge to rule on non-dispositive matters and to make recommendations on dispositive matters. Because it was not clear to the court, however, when the magistrate judge would have the time to rule on dispositive matters, the court commenced its own review of the briefs, the legal authorities, the motions, and the file. The court was beginning the process of preparing its own written resolution of the motions when it received the magistrate judge's comprehensive order and recommendation on September 29, 2004.

Upon review of the magistrate judge's work, the court has concluded that it would be a pointless waste of resources to complete its written order, which would have reached the same conclusions as did the magistrate judge. This is but the latest of numerous frivolous lawsuits brought by this plaintiff, and the magistrate judge's submission makes this clear. The court will therefore simply will[sic] adopt the magistrate judge's ruling as the final order of this court.

The court recognizes that parties ordinarily have ten days to file objections to a magistrate judge's rulings and recom-

to file objections to a magistrate judge's rulings and recommendations. The magistrate judge so notified the parties. This period of time, however, assumes that the district judge will have no familiarity with the issues presented. That is not the case here, as already noted. The court is in a position to issue its ruling without delay and does not believe that further submissions by the plaintiff will elucidate the issues. Accordingly, it is

ORDERED as follows:

1. The recommendation is ACCEPTED and adopted as the final order of the district court concerning this case.
2. The motions to dismiss(##11,17,18, and 37) are GRANTED. The clerk shall forthwith enter final judgment in favor of defendants and against plaintiff, dismissing the complaint with prejudice. Defendants may have their costs by filing a bill of costs within eleven days of the date of this order.
3. Plaintiff's motion to amend the complaint (#43) is DENIED as futile.

DATED this 30 day of September, 2004.

BY THE COURT:

/S/ Edward W.Nottingham
EDWARD W. NOTTINGHAM
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

Civil Action No. 03-N-1528(OES)

EDWARD RONWIN, Filed Sep 30, 2004

Plaintiff

v.

ALLSTATE INSURANCE COMPANY, an Illinois corporation, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation, DAVID LAWSER, TERRI RENE SNYDER, CITY OF FORT COLLINS, COLORADO, a municipality and HEIDI NASH,

Defendants.

FINAL JUDGMENT

In accordance with orders filed during the pendency of this case, and pursuant to Fed.R.Civ.P. 58(a)(1), the following FINAL JUDGMENT is hereby entered as follows:

Pursuant to the written Order Dismissing Case with Prejudice filed by Judge Edward W. Nottingham on September 30, 2004, it is

ORDERED that:

1. Defendants' Motions to Dismiss are GRANTED.
2. Judgment is entered in favor of Defendants and against Plaintiff, dismissing the Complaint with prejudice.
3. Defendants shall have their costs upon the proper filing of a Bill of Costs within eleven days of the Order Dismissing

Case with Prejudice filed on September 30, 2004; and

4. Plaintiff's motion to amend the complaint is DENIED as futile.

Dated this 30 day of September, 2004.

APPROVED BY THE COURT: ENTERED FOR THE COURT:

/s/Edward W. Nottingham By /s/ Stephen P. Ehrlich
EDWARD W. NOTTINGHAM Stephen P. Ehrlich
United States District Judge Chief Deputy Clerk

EOD
United States District Court
Denver, Colorado

OCT 01 2004

GREGORY C. LANGHAM
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-1528(OES)

EDWARD RONWIN,

Filed Sep 29 2004

Plaintiff(s),

v.

ALLSTATE INSURANCE COMPANY, an Illinois corporation, et al.,

Defendant(s).

RECOMMENDATION THAT DEFENDANT'S MOTIONS TO DISMISS BE GRANTED AND ORDERS DENYING PLAINTIFF'S MOTIONS

Entered By Magistrate Judge O. EDWARD SCHLATTER

INTRODUCTION

Plaintiff has sued two insurance companies, two representatives of one of the companies, a police officer and the City of Fort Collins. According to plaintiff's Complaint, he was prompted to bring these lawsuits by the fact that he received one mailing and one telephone call from each of the insurance companies that informed him that his policies had lapsed, and a period of extended coverage provided in the written notice would also expire, unless he paid certain demanded premiums by a given date. Plaintiff telephoned the companies repeatedly to complain about the content of the notices, and to complain that he should not receive any notices because he had communicated his intentions to allow the policies to expire. The City of Fort Collins and its police department have been sued because an officer telephoned plaintiff to tell him that his repeated telephone calls to State Farm could constitute harassment.

Plaintiff is a lawyer, as explained below, and he has dressed up his claims with a great deal of verbiage, but the above

paragraph seems to express the essence of what defendants have done to plaintiff: one mailing and one phone call each from the insurance companies, and one phone call from an officer with the Fort Collins Police Department. In response to these events, plaintiff has filed this lawsuit. Against the insurance companies, he has asserted claims for deceptive trade practices, claims under the RICO Act (Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968), claims for intentional infliction of emotional distress, a claim entitled "contributing to defamation," claims under § 1983 against the police officer, and a "pattern and custom" claim under § 1983 against the City of Fort Collins.

All of the plaintiffs have filed motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff has filed Responses to all of the motions, and he attached documents to his responses. His exhibits include mailings that he received from the insurance companies, correspondence between plaintiff and the companies after he began complaining about the mailings, and a copy of the police report that resulted when a representative for State Farm asked the police for assistance in stopping plaintiff's telephone calls. Neither of the companies presented any outside materials either in their motions or in their replies. Plaintiff did not ask to convert the motions to dismiss into motions for summary judgment, and he cannot cause such a conversion through the mere fact that he attached copies of notices and letters to his responses. I have addressed defendants' motions as motions to dismiss, and not as motions for summary judgment.

PLAINTIFF'S PRO SE STATUS

Plaintiff is proceeding in this case without counsel. Ordinarily, when parties are proceeding without counsel, courts

are required to construe their pleadings in a liberal manner, without stepping over the line by acting as advocate for the litigant. Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). However, this case presents a unique set of circumstances.

Plaintiff is a 1974 graduate of the School of Law at Arizona State University, and was admitted to practice law in Iowa in the same year. (See sources below.) Whereas lay persons who proceed in court without counsel are entitled to a liberal interpretation of their pleadings, a lawyer who elects to represent himself is not. But since the date of his admission to the practice of law, plaintiff has been disciplined, suspended, and/or refused admission to practice on several occasions. In Application of Ronwin to be Admitted, 555 P.2d 315 (Ariz. 1976), plaintiff's request for admission to the Arizona bar was denied. Plaintiff was found to be mentally incapable to practice for the reason that he suffered from an established personality disorder that "causes him to be unreasonably suspicious that bad motives and intentions activate persons with whom he comes into contact, and to unreasonably imagine that he is the object of unfair persecution," based upon his irresponsible and highly derogatory untrue public accusations and charges against persons in responsible positions. In Matter of Ronwin, 680 P.2d 107 (Ariz. 1983), plaintiff's application to practice was again denied for lack of showing of mental fitness, in light of applicant's continued filing of unwarranted, vexatious and harassing actions, his use of intemperate, provocatory language and epithets, his exhibition of a lack of control, restraint and civility, and his vilification of those who opposed him. In Iowa Supreme Court Board of Professional Ethics and Conduct v. Ronwin, 557 N.W.2d 515 (Iowa 1996), the Iowa Supreme Court affirmed a recommendation that plaintiff's license to practice be

suspended for one year, for maintenance of frivolous lawsuits and appeals, unwarranted accusations against judges, and frivolous lawsuits against opposing counsel. The Court listed in its Appendix A the numerous frivolous or vexatious lawsuits that had been filed by plaintiff.

Plaintiff is now eighty years old. See Iowa Supreme Court Board, 557 N.W.2d 522 (age 72 at the time of the Iowa proceedings in 1996). Assuming that he completed the one year suspension that was imposed by the Iowa Supreme Court, he at this time is apparently empowered, if not capable, to practice law--at least in Iowa. A review of the pleadings that he has filed in this case reflects that, mentally infirm or not, the plaintiff is intelligent, articulate, and fully capable of presenting arguments, statutes and case citations in the same manner that a practicing attorney would. For these reasons, he is not entitled to a liberal interpretation of his pleadings.

THE MOTIONS AT ISSUE

I have before me for recommendation or resolution the following motions:

1. "Defendant Allstate insurance Company's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)" [filed November 10, 2003];

2. "Motions of Defendants State Farm Mutual Automobile insurance Company, David Lawser and Terri Rene Snyder to Dismiss Pursuant to Fed.R.Civ.Pro. 12(b)(6)" [filed October 6, 2003];

3. "Motion to Dismiss Eighth Cause of Action by Defendant Heidi Nash" [filed October 9, 2003];

4. "Motion to Dismiss Ninth Cause of Action by Defendant City of Fort Collins" [filed October 9, 2003];

5. "Plaintiff's MOtion for Premission to Amend the Comp-

laint" [filed November 20, 2003];

6. Plaintiff's "Motion to Sanction Jon F. Sands for Violation of FRCP, Rule 11" [filed November 10, 2003];

7. Plaintiff's "Motion Seeking Reimbursement from Defendant Allstate Ins. Co. for Costs of Service of Summons and Complaint" [filed October 31, 2003];

8. Plaintiff's "Motion Seeking Reimbursement from Defendants State Farm [etc.], for Service of Summons and Complaint" [filed October 30, 2003]; and

9. "Nash Motion to Stay," included with "Combined Reply of Nash and Fort Collins" [filed November 3, 2003].

SUMMARY OF RECOMMENDATIONS AND ORDERS

I recomended to District Judge Edward W. Nottingham that the motions to dismiss (#1 through #4 above) be granted, and that plaintiff's claims against all defendants be dismissed. My recommendation would be the same, whether plaintiff's pleadings were interpreted liberally or not. By any standard of measurement, plaintiff's Complaint against the defendants in this case is an example of the kind of frivolous lawsuit for which plaintiff is now somewhat notorious. His claims against the insurance companies began with much ado about nothing, and his actions with regard to them escalated the matter to the point that police were called in an effort to control his actions. This lawsuit is little more than spite on plaintiff's part.

I recommend that Judge Nottingham deny plaintiff's Motion for Permission to Amend the Complaint (#5 above). First, plaintiff did not tender any amended complaint with his motion, but, second, plaintiff clearly cannot state any claims as a result of the conduct of the defendants he has named, and any amendments of his Complaint would be futile.

I will enter an Order denying the motion for sanctions against counsel Jon Sands (#6 above), because the motion has no merit whatsoever. I will deny plaintiff's requests for reimbursement of costs (#7 and #8 above) because Allstate has paid the reimbursement, and plaintiff has failed to prove his entitlement to the reimbursement from the State Farm defendants. The remaining motion is a motion for stay (#9 above) filed by defendant Nash, which will be deemed moot.

ADVISEMENT TO PLAINTIFF

Plaintiff is proceeding without counsel, as such. In the spirit of that status, plaintiff is advised that he is entitled to seek review or reconsideration of my recommendation by filing an "objection" within ten days. An advisement of plaintiff's right to appeal or object is attached to this Recommendation on a page which is entitled "Advisement Under Fed.R.Civ.P. 72."

STANDARD FOR CONSIDERATION OF DISMISSAL PURSUANT TO RULE 12(b)(6)

Rule 12(b)(6) permits a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." A complaint should not be dismissed under Rule 16(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted); accord Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir.1988). In reviewing the sufficiency of the complaint, a court must presume that the plaintiff's factual allegations are true, and construe them in a light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232 (1974), overruled on other grounds by Davis v. Scheuer, 416

U.S. 232 (1974), overruled on other grounds by Davis v. Scheuer, 468 U.S. 183 (1984) [note: the repetition of the Davis citation is as given in the original document]; accord Meade, 841 F.2d at 1526.

Rule 12(b)(6) must be read in conjunction with Rule 8(b) which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." The statement need not contain detailed facts, but it "must give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley. 355 U.S. at 47. A plaintiff is not required to state precisely each element of the claim. 5 Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1216, at 154-159 (1990). Nonetheless, a plaintiff must "set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988). A court may not assume that a plaintiff can prove facts that he has not alleged, or that the defendant has violated laws in ways that plaintiff has not alleged. Associated General California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983).

FACTS

All of the facts recited below are taken from plaintiff's Complaint.

Claims against Allstate. In his first three claims, plaintiff sues Allstate for its alleged misconduct. Plaintiff states that from November 23, 2001, to May 23, 2002, he insured his 1987 Cadillac Brougham automobile with Allstate Insurance Company. Before the date that his insurance was scheduled to expire, plaintiff telephoned the Allstate office to tell them

that he would not be renewing his policy. Plaintiff asserts that on June 10, 2002, after the date on which the policy had expired, he received what he terms "an alleged 'Automobile Cancellation Notice' from Allstate demanding a "Minimum Amount Due' of $92.17" before a certain date and time.

Plaintiff telephoned Allstate, and told Michael J. Lantari, the agent to whom he spoke, that he owed nothing, and Allstate should "stop bothering" him. Without explaining who initiated the conversation, plaintiff states that he also spoke with Kathy Thomson, a Customer Care Manager for Allstate in Denver. She explained that Allstate continued insurance policies beyond their expiration dates, at least for a month, "pursuant to law." Plaintiff states that she could not identify the statute upon which she based this statement. Plaintiff asserts, "[U]ltimately Allstate withdrew its demands for payment, but not before considerable time and effort expended by Ronwin in letter writing and telephone calls and in worry and distress caused by the outrageous, fraudulent and deceptive conduct of Allstate and its agents and employees."

Against Allstate, plaintiff asserts as his First Cause of Action that its "continuation of any policy without an insured's permission and even when informed by the insured that the policy in effect would not be renewed upon its expiration, is a deceptive trade practice within the meaning of CRS § 6-105 [sic], subsections (b), (c), (e) and (l), and a deceptive trade practice at common law." For his Second Cause of Action, he alleges that Allstate's conduct violates RICO. For his Third Cause of Action, plaintiff alleges that Allstate's conduct constitutes the intentional infliction of emotional distress.

Claims against State Farm, Lawser and Snyder. Plaintiff

entered into a contract with State Farm for automobile insurance to commence upon the expiration of the policy he had with Allstate, that is, for the six month period from May 23, 2002, to November 23, 2002. When he secured his insurance plaintiff states that he spoke with David Lawser, an agent for State Farm. He states that he "told Lawser that if Ronwin decided not to continue automobile insurance with State Farm Ronwin was not to be harassed.."

In October of 2002, plaintiff was informed that the premium for his policy would increase. In light of that, plaintiff "told Lawser that it was likely that Ronwin would not agree to renew said policy and reminded Lawser again that Ronwin was not to be bothered or harassed if Ronwin elected to allow said policy to expire by its own terms on Nov. 23, 2002." Plaintiff obtained a policy with a different company.

On December 9, 2002, an employee for State Farm "telephoned Ronwin and demanded $216.58." Plaintiff told that caller that he owed nothing, and telephoned Lawser to remind him of his agreement. Lawser assured him that plaintiff "would not be further bothered by State Farm."

On December 11, 2002, plaintiff received in the mail "an alleged 'Expiration Notice,' which the Regional Director for State Farm described as a "bill" and which 'notice' did indeed demand $216.58." In response to this communication, plaintiff states in paragraphs 33-37 of his Complaint that he took the following actions: (a) on December 12, 2002, he "telephoned Lawser's office...and was told that Lawser had 'left for the day;'" (b) on December 13, 2002, he "again called Lawser's office and was told that Lawser was 'out for the day;'" (c) on December 16, 2002, plaintiff "again called

Lawser's office and was told that Lawser was 'on vacation;'" (d) plaintiff states that he had once had Lawser's mobile telephone number, but had lost it. During his telephone call of December 16, 2002, he "asked for Lawser's mobile telephone number."

Plaintiff's request for the mobile number was refused, and, plaintiff states, the State Farm employee "hung up." Plaintiff then states that he "continued to redial since Ronwin had a legitimate purpose to call. After a while, the State Farm employee [Terri Snyder] called the Ft. Collins Police Dept."

Heidi Nash, an officer with the police department, telephoned plaintiff to urge or warn him to cease his telephone calls to Lawser's office. Plaintiff states that he ceased his efforts to telephone Lawser's office, "and contacted State Farm's home office in Bloomington, Illinois." Ultimately, Jerry T. Smith, the Regional Director for State Farm in Greeley, Colorado, telephoned plaintiff in response to his calls. According to plaintiff, Smith explained that "State Farm continued automobile policies beyond their expiration dates without agreement from the insured because a "statute or regulation' allowed the practice. Smith admitted to plaintiff that he did not know which statute or regulation.

Against State Farm, Lawser and Snyder, plaintiff alleges as his Fourth Cause of Action a claim for "deceptive trade practice within the meaning of CRS § 6-105 [sic], subsections (b), (c), (e) and (l), and a deceptive trade practice at common law." For his Fifth Cause of Action, he asserts a claim pursuant to RICO. His Sixth Cause of Action is for intential infliction of emotional distress, and his Seventh Cause of Action is for "contributing to a defamation of Ronwin."

Claims against Nash and Snyder. As noted above, Heidi Nash is an officer with the Fort Collins Police Department who telephoned plaintiff in an effort to get him to stop calling State Farm's local office. Plaintiff states that Nash took the call from Terri Snyder, an agent for State Farm, and he alleges that "Snyder deliberately gave utterly false information to Nash." Plaintiff asserts that "Nash telephoned Ronwin and immediately began shouting at Ronwin and theatening arrest and adamantly refusing to listen to Ronwin's view of the matter." Plaintiff states that Nash "subsequently filed a report, dated Dec. 16, 2002, which contains Snyder's false accusations plus some incorrect statements on Nash's part." In plaintiff's view "[t]he thrust of said report is to defame Ronwin and to make it appear that Ronwin was an harasser; whereas, in fact, Ronwin was being harassed by State Farm, Lawser and Snyder."

Against Nash and Snyder, plaintiff asserts in his Eighth Cause of Action a single claim pursuant to 42 U.S.C. § 1983. He alleges that Snyder made false statements in an effort to protray plaintiff as an harasser, and "thereby to defame Ronwin and to get Nash to act in tandem with Snyder's purpose to deny Ronwin due process and equal protection...under cover of state law."

Claims against Fort Collins only. In his Ninth, and last, Cause of Action, plaintiff alleges that Fort Collins "has a policy approved by its executive and legal authorities which amounts to an erroneous interpretation of CRS § 18-9-111 [Colorado's harassment statute], subsections (a) taken with (e)..., [note: the subsection identities in the magistrate judge's Recommendation are correct, but Ronwin made a mistake and later identified the correct subsections], which resulted in a denial of due process and equal protection of the

law to Ronwin and violation of both Ronwin's 14th Amend., U.S. Constitutional rights and 42 U.S.C., § 1983."

ABSOLUTE IMMUNITY FOR INSURANCE COMPANIES IN REGARD TO STATE LAW CLAIMS

The two insurance companies argue that they are entitled to absolute immunity from plaintiff's state law claims in regard to any oral and written communications that occurred between the companies and plaintiff. The state law claims that arise out of communications between the companies and plaintiff include plaintiff's first and third claims against Allstate (deceptive trade practice and intentional infliction of emotional distress), and plaintiff's fourth, sixth and seventh claims against State Farm, Lawser and Snyder (deceptive trade practice, intentional infliction of emotional distress and "contributing to a defamation of plaintiff").

State Farm asserts that the immunity provided by the statute extends even to plaintiff's federal claim under RICO. Allstate acknowledges that it does not. Smith v. Losee, 485 F.2d 334, 341 (10th Cir. 1973). Allstate is correct. The Tenth Circuit Court of Appeals stated in Smith v. Losee that a "federally created cause of action cannot be restricted by state laws or rules relating to sovereign immunity nor to official privilege." id. However, plaintiff's RICO claims are defective for other reasons, and will be discussed below.

The insurance companies base their claims to immunity upon Colo.Rev.Stat. § 10-4-607. That statute reads as follows:

> Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise

against, the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to the reasons for cancellation or non-renewal, or for any statement made by any of them in any written notice of cancellation or notification of reason for non-renewal, or in any other communication, oral or written, specifying the reason for cancellation or non-renewal, or the providing of information with respect thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Emphasis added [in original document].

On its face, the statute encompasses the conduct of the insurance companies that forms the basis for plaintiff's claims against them. Plaintiff's claims against the companies are premised upon written or oral communications between the companies and plaintiff that relate to the companies' written or oral notices of cancellation of plaintiff's policies. The statute provides absolute immunity to both companies as well as their agents for communications both by mail and by telephone.

In his Response, plaintiff argues that the statute does not apply here. In his view, at the time the communications in regard to cancellation occurred, he had already terminated or cancelled his policies. Therefore, he argues, no policies existed to which the immunity statute could be applied.

Nothing in the statute expresses any intent on the part of the legislature to limit the application of this statute to insurance policies for which no notice of cancellation or ter-

mination had been provided by an insured. Indeed, the very theme of the statute expresses an intent to provide immunity for notices of cancellation or non-renewal regardless of the current status of any policy. Notices of cancellation or non-renewal generally are not even contemplated during periods in which the premiums are current, so the statute would be moot if it did not apply to periods during which the policy has been cancelled or terminated, for whatever reason.

In summary, plaintiff has failed to overcome the showing of immunity made by the insurance companies on behalf of themselves and their agents. Therefore, the companies and their representatives are entitled to dismissal of the state law claims that have been brought against them, including claims One and Three against Allstate (deceptive trade practice and intentional infliction of emotional distress), and claims Four, Six and Seven against State Farm and its representatives (deceptive trade practice, intentional infliction of emotional distress and "contributing to a defamation of plaintiff").

PLAINTIFF'S FAILURE TO STATE CLAIMS AGAINST INSURANCE COMPANY DEFENDANTS

I have concluded that the insurance companies are immune from plaintiff's state law claims. Nevertheless, because this is a Recommendation, I will address plaintiff's failure under Fed.R.Civ.P. 12(b)(6) to state claims with regard to each of the state law claims.

CLAIMS FOR DECEPTIVE TRADE PRACTICES

Plaintiff has asserted claims for deceptive trade practices against Allstate (First Cause of Action) and against State Farm and its representatives (Fourth Cause of Action). He states that is claims are brought pursuant to "CRS § 6-105

[sic] subsections (b), (c), (e) and (l)," which I construe to be claims brought pursuant to those designated subsections of Colo.Rev.Stat § 6-1-105, the Colorado Consumer Protectiion Act ("CCPA").

In Hall v. Walter, the Colorado Supreme Court stated the tests that a party must satisfy in order to show that he has standing to bring a claim pursuant to the CCPA, as well as the tests that must be satisfied in order to prove a deceptive business practice. 969 P.2d 224, 235 (Colo.1998). The Court acknowledged that the statute provides that "any person" may bring a private cause of action pursuant to the CCPA, but the Court limited this language as follows:

> [F]or purposes of a private cause of action pursuant to section 6-1-113, 2 C.R.S. (1998), "any person" means a person as defined by 6-1-102(6), 2 C.R.S. (1998), who establishes (1) that the defendant engaged in an unfair or deceptive trade practice; (2) that the challenged practice occurred in the course of defendant's business, vocation, or occupation; (3) that it significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property; (4) that the plaintiff suffered injury to a legally protected interest; and (5) that the challenged practice caused the plaintiff's injury.

969 P.2d 224, 235 (Colo. 1998).

Plaintiff also has alleged that the conduct of the insurance companies constituted a "deceptive trade practice at common law." Compl. at ¶¶ 16 & 41. The Colorado Supreme Court has held that the list of deceptive trade practices that are contained in section 105 of the CCPA is not exhaustive. Showpi-

ece Homes Corp. v. Assurance Co. of Am., 38 P.3d 47, 53-54 (Colo. 2001). Arguably, under Showpiece Homes, claims that might otherwise be brought pursuant to the common law instead may be brought pursuant to the CCPA. Showpiece Homes seems to hold that other, non-included, deceptive or unfair business practices that have caused injury to a party, and which could clearly injure the public at large are within the purview of the CCPA. Id. at 54; but see Coors v. Security Life of Denver Ins.Co., 91 P.3d 393, 400-401 (Colo.App. 2003) (holding that the holding by the Supreme Court in Showpiece Homes is limited to the conclusion that only insurance companies and insurance transactions will be covered by the CCPA if the requirements of Hall are met, but not other non-listed claims). cert granted on other issues, 2004 WL 1146583, May 24, 2004 (Colo). At any rate, regardless of the manner in which plaintiff may style his claim, any claim brought pursuant to the so-called common law of deceptive trade practices is necessarily subject to the tests that are provided in the CCPA, and cannot be reviewed under any lesser standard in regard to the nature of the elements or proof.

Under Hall, in order for plaintiff to state a claim under the CCPA, he must at the outset allege facts that demonstrate that the defendant insurance companies in this case have engaged in conduct that constitutes a deceptive trade practice. Both insurance companies argue that plaintiff has failed to plead any such facts. Additionally, they argue that plaintiff has failed to allege facts that reflect that he has standing to bring an action under the CCPA, both because he has failed to show that he "suffered injury in fact to a legally protected interest," and because he has failed to allege any facts that reflect that the actions about which he makes complaint "significantly impacts the public." I agree with the insurance

companies.

First, section 6-1-205(1)(e) requires that to establish a deceptive trade practice, the plaintiff must show that a defendant "knowingly makes a false representation." The Colorado Supreme Court has held that a false representation consists of "false or misleading information," and the false information "must either induce a party to act, refrain from acting, or have the capacity or tendency to attract customers." Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc., 62 P.3d 142, 147 (Colo. 2003). The Court stated:

> A misreprestation, which is a false or misleading statement that induces the recepient to act or refrain from acting, is actionable when it is made "either with knowledge of its untruth, or recklessly and willfully made without regard to its consequences, and with an intent to mislead and deceive the plaintiff."

Id., citing Parks v. Bucy, 211 P.638, 639 (1922).

Plaintiff himself has attached to his responses the documents that he claims are false or misleading. See Responses to Allstate and State Farm, Ex's 4 & 6 respectively. Plaintiff can point to nothing in those exhibits that is either false or misleading. Both of the exhibits purport to do the same thing, notify the insured that coverage will not be continued unless the insured makes payment of the premium amount that is contained in the notice. Plaintiff complains that Allstate's notice, for example, requests information in regard to any subsequent insurance that an insured may have obtained from another carrier, but nothing about that request is false, misleading or calculated to induce a party to act or refrain from acting. In short, plaintiff has failed to allege or identify

any "false representation" that was knowingly made by either insurance company.

Second, plaintiff has not alleged, and cannot show, that he has suffered any injury in fact to a legally protected interest. To show such an injury, plaintiff is required to demonstrate that any "injury in fact to plaintiff's legally protected right resulted from the alleged action of the defendant." Id.

The deceptive business practice about which plaintiff makes complaint is the practice of the insurance companies by which they allegedly extend an insured's policy beyond the date of its termination or cancellation, in plaintiff's words, "in the hope" that the insured will sign on for an extension of coverage. However, Allstate's form contains no such language, at least not on the face page that is included as Exhibit 4 to plaintiff's Response. State Farm's notice states that even if an insured tenders a premium, "[t]here is no coverage between the date and time of expiration and the date and time of your coverage of your coverage is again effective." But even if the forms stated what plaintiff claims that they state, plaintiff has admitted that he was not deceived by any such statements, and has admitted that he incurred no pecuniary loss as a result of this alleged practice. In sum, plaintiff has alleged no facts that reflect that he suffered any injury in fact.

Plaintiff has also failed to allege facts that would demonstrate that the business practice about which he complains "significantly impacts the public." See Anson v. Trujillo, 56 P.3d 114, 117-18 (Colo.App. 2002). The Colorado Supreme Court has identified certain considerations that are relevant in determining whether a challenged practice significantly impacts the public within the context of a CCPA claim: (1)

the number of consumers directly affected by the challenged practice; (2) the relative sophistication and bargaining power of the consumers affected by the challenged pracrtice; and (3) evidence that the challenged practice has previously affected other consumers or has the significant potential to do so in the future. Rhino Linings, 62 P.3d at 149. Plaintiff has alleged no facts that would demonstrate the existence of public impact in accordance with these factors. Plaintiff has not alleged that other consumers, in fact, have been deceived by anything on the notices about which he complains, and plaintiff can hardly allege that other consumers may be deceived by the companies' business practice when his allegations reflect that he himself was not.

Plaintiff complains that he was forced to expend a great deal of time, and suffered emotional distress, in his efforts to tell the representatives of the companies that he had cancelled his policies, and his cancellations were final. However, this time and effort was not caused by the alleged deceptive business practice. In fact, had plaintiff elected to simply ignore the notices sent by the companies, he would have achieved the same result. The notices advise insured's that failure to pay will result in a cancellation of insurance. For those persons, such as plaintiff, who desire to terminate their policies, the course seems clear: don't pay. Far from suffering any injury from the companies' practices, plaintiff and other insureds, instead, are provided a grace period of continued coverage which extends beyond the date upon which a policy would otherwise lapse or terminate in the event than an insured merely overlooked a payment.

In summary, plaintiff has failed to allege facts that would support his claim that the insurance companies engaged in a deceptive business practice, and has failed to show that he

has standing to bring a claim pursuant to the CCPA, that is, that the alleged practice has a significant public impact, or that he suffered an injury in fact. For these reasons, I recommend that the deceptive trade practice claims asserted by plaintiff in his First and Fourt causes of action be dismissed.

RICO CLAIMS

Plaintiff has asserted RICO claims against Allstate (Second Cause of Action), State Farm and State Farm's representatives, Lawser and Snyder (Fifth Cause of Action). The RICO claims against the insurance companies are similar, if not identical. At paragraphs 21 to 25, plaintiff states that "Allstate used the United States Mail...to garner profits as a consequence of Colorado's law which requires Colorado resident owners of motor vehicles...to carry minimum amounts and types fo automobile insurance." Plaintiff alleges that "[w]hen an insured informs Allstate that he, she or it will not renew their vehicle insurance, Allstate unlawfully refuses to honor the insured's order and acts as though the insured has agreed to renew the insurance in the hope that the insured has not obtained insurance elsewhere...and, lacking knowledge, will be browbeaten into paying at least one month's premium or more..." The same allegations are made against State Farm and its representatives at paragraphs 47 to 49.

Boiling plaintiff's allegations against the insurance companies down to their essence, they state, in effect, that after an insured, like plaintiff himself, cancels his insurance, the insurance continue to provide coverage "in the hope" that the insured may, at some point, be "browbeaten" into paying an additional premium. Plaintiff argues that this is an unlawful use of the mails.

As I noted above, in his Response to Allstate's motion to dismiss, plaintiff attached as his Exhibit 4 a copy of the notice that he received from Allstate. In his Response to State Farm's motion to dismiss, plaintiff attached as his Exhibit 6 a copy of the notice that he received from State Farm. Both companies acknowledged the accuracy of the two notices that plaintiff attached, and commented upon their contents.

RICO allows private parties to bring civil suits for treble damages for certain actions by defendants that are criminal in nature, as defined by RICO. 18 U.S.C. § 1964(c).

> To state a RICO claim, a plaintiff must allege that the defendant violated the substantive RICO statute, 18 U.S.C. § 1962, by setting forth "four elements: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" Robbins v. Wilkie, 300 F.3d, 1208, 1210 (10th Cir. 2002) (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 4596 [sic], 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985)). A pattern of racketeering activity must include commission of at least two predicate acts. Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993). Also, a plaintiff has standing to bring a RICO claim only if he was injured in his business or property by reason of the defendant's violation of § 1962. Robbins, 300 F.3d at 1210.

Deck v. Engineered Laminates, 349 F.3d 1253, 1257 (10th Cir. 2003). RICO defines "racketeering activity" as any act in violation of specified state and federal crimes. Resolution Trust Corp. v Stone, 998 F.2d 1534 (10th Cir. 1993); and see 18 U.S.C. § 1961(1) (providing a listing of crimes). A

racketeering activity must be an act that is subject to criminal sanction in and of itself. Sedima, 473 U.S. at 488.

I need not consider all of the elements of RICO because plaintiff has failed to allege facts that satisfy the requirements of at least two of them. Plaintiff has not alleged facts that demonstrate that he has suffered the type of injury that is necessary to provide him with standing to bring a RICO claim, and he has not shown the existence of any predicate acts.

First, as counsel for the insurance companies have pointed out, plaintiff alleged no facts that reflect that he has staning to bring a claim under RICO, that is, that he suffered an injury "in his business or property by reason of the defendant's violation" of RICO. Plaintiff can point to nothing more than that he spent time on the telephone dealing with the companies' respective notices of cancellation. See Oscar v. University Students Co-operative Assoc., 965 F.2d 783, 785-87 (9th Cir. 1992) (plaintiff's diminution in the enjoyment of her apartment held not to constitute injury covered by RICO). Far from suffering any injury, plaintiff himself admits in his Complaint that the companies' alleged scheme, in his view, involved the extension of free insurance in the hope that the insureds would sign on for more. This hardly constitutes "injury" to business or property. And even if plaintiff's time and stress in regard to his telephone calls constituted injuries, plaintiff cannot show that such injuries were caused "by reason of defendant's violation of § 1962." Deck v. Engineered Laminates, 349 F.3d at 1257, citing Robbins v. Wilke, 300 F.3d at 1210. Rather, those injuries arose when plaintiff called the insurance companies, repeatedly, to complain.

Second, plaintiff has alleged no predicate act. He states, in conclusory fashion, only that the companies' policies are "a form of extortion and a racket." Compl. at ¶¶ 24 & 51. "Racketeering" itself is merely a broad description of the discrete and particular criminal acts that may constitute the offense, as defined at § 1961(1) of the Act. Extortion may be one of the particular criminal acts covered by the statute, but plaintiff has alleged no facts that reflect that any extortion occurred. Broadly speaking, extortion is the obtaining of property from another, induced by wrongful use of actual or threatened force, violence, or fear. See Black's Law Dictionary, Sixth Edition (1990). Plaintiff admits that neither of the companies coerced him to turn over any property or currency, and he has not alleged any facts that reflect the use by the companies of any "wrongful use of actual or threatened force." That the companies are planting "fear" or concern in the minds of its [sic] insureds is not a wrongful act because the loss of insurance is a serious matter, and the companies have a legitimate reason to warn people about that consequence as an impending event.

If plaintiff is relying for his predicate act upon the mailing by the companies of the notices of cancellation that he attached to his responses, he has pointed to nothing in the notices that may be considered unlawful, extortionate or wrongful. As defendants point out, the notices merely state that if premiums are not paid, the policies will be cancelled. Even if defendants extend coverage to insureds for an additional period beyond the expiration date of their policies - which does not, in fact, appear to be the case - "in the hope" that premiums will be paid, plaintiff has pointed to nothing in that device or artifice that could be considered wrongful.

In summary, plaintiff has failed to state a claim under

RICO against either of the insurance companies and their representatives. I therefore reecommend that plaintiff's Second Cause of Action against Allstate be dismissed, and his Fifth Cause of Action against State Farm and its representatives be dismissed.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff has asserted in his Third and Sixth Causes of Action claims against both insurance companies, and against State Farm's representatives, for intentional infliction of emotional distress. In each of these claims, plaintiff states simply: "The conduct of Allstate [and of State Farm, Lawser and Snyder] alleged herein constituted intentional infliction of emotional distress on Ronwin." Compl. at ¶¶ 27 & 53.

The elements of liability for the tort of intentional infliction of emotional distress, also known as the tort of exteme and outrageous conduct, are that (1) the defendant engaged in extreme and outrageous conduct; (2) the defendant engaged in conduct recklessly or with the intent of causing plaintiff severe emotional distress; and (3) the plaintiff incurred severe emotional distress that was caused by defendant's extreme and outrageous conduct. See Brunetti v. Rubin, 999 F.Supp. 1408, 1412 (D.Colo. 1998), citing Culpepper v. Pearl Street Bldg.,Inc., 877 P.2d 877, 882 Colo. 1994). Whether certain conduct is outrageous is a question of fact. However, in the first instance, it is a question of law for the court to determine whether reasonable persons could differ on the issue of outrageousness. Id.

Proof of outrageous conduct under Colorado law must consist of either an extreme act, both in character and degree, or

a pattern of conduct from which the decisive conclusion is that infliction of severe mental suffering was calculated or recklessly or callously inflicted on the plaintiff. Id. citing Gard v. Teletronics Pacing Systems, Inc., 859 F.Supp. 1349, 1354 (D.Colo. 1994. [sic]. Judge Kane of this court has determined that a plaintiff must establish a certain minimum threshold level of conduct to state a cause of action for outrageous conduct: the plaintiff must allege either that (1) defendant has engaged in a pattern of conduct that intended to cause or recklessly did cause severe emotional distress, or (2) if the incident is isolated, defendant blatantly and severely harassed plaintiff. Rawson v. Sears Roebuck & Co., 530 F.Supp. 776, 780 (D.Colo. 1982), rev'd on other grounds, 822 F.2d 908 (10th Cir. 1987).

Plaintiff has alleged no facts that satisfy any part of the test for extreme or outrageous conduct. He has stated no facts that would tend to show that the companies "engaged in a pattern of conduct" that was "intended" to cause severe emotional distress, or that they engaged in an isolated incident that "blatantly and severely harassed plaintiff." At most, plaintiff has alleged that he received one mailing and one telephone call from each of the insurance companies. Other telephone calls between plaintiff and the companies were initiated by plaintiff. Plaintiff has alleged no facts that show that the content of the telephone calls from representatives for the companies was anything other than measured and polite.

Reasonable minds could not differ as to the lack of outrageousness in the conduct of the insurance companies as stated by plaintiff in his effort to allege outrageous conduct. For this reason, I recommend that plaintiff's Third and Sixth claims against these defendants, his claims for intentional

infliction of emotional distress, be dismissed for failure to state claims.

"CONTRIBUTING TO A DEFAMATION OF PLAINTIFF"

In his Seventh Cause of Action, plaintiff alleges that State Farm, Lawser and Snyder "contributed to a defamation of Ronwin and to a police report which implies that Ronwin had violated the law," Compl. at ¶ 55. These defendants argue, first, that a tort called "contributing to defamation" is not known to exist in the law, and, second, plaintiff's claim is barred by Colo.Rev.Stat. § 16-3-202(4), which grants immunity "from any civil liability" to any private citizen who, acting in good faith, reports to any police officer or law enforcement authority "the commission or suspected commission of any crime or for giving other information to aid in the prevention of any crime," Id. I agree with the State Farm defendants.

Plaintiff has not identified any authority that would support his claim with regard to the existence of a tort for "contributing to a defamation." In the absence of such authority, I conclude that no such tort exists.

Plaintiff argues in his Response that Snyder is not entitled to immunity because she provided false information to the police, other than in good faith, about the status of plaintiff's insurance policy with State Farm. As these defendants point out in their Reply, plaintiff misperceives the issue. The essence of the call to the police, and the reason for the police response to plaintiff, were the remarks by Snyder to the police that plaintiff was repeatedly telephoning the office. See, e.g., Pltf's Response, Exh. 7 (police report). And plain-

tiff does not deny that he did, in fact, telephone the State Farm office on repeated occasions. See Compl. at ¶¶ 34-37. Plaintiff has alleged no facts that would tend to show that Snyder telephoned the police other than in good faith.

In summary, plaintiff has failed to demonstrate the viability of a claim for "contributing to a defamation," and has failed to allege facts that would deprive these defendants of the immunity that is provided by the Colorado statute. For these reasons, I recommend that plaintiff's Seventh Cause of Action be Dismissed.

SECTION 1983 CLAIMS AGAINST NASH AND SNYDER

In his Eighth Cause of Action, plaintiff alleges that State Farm representative Terri Snyder "deliberately gave utterly false information to [police officer] Nash, [and] [b]ased on Snyder's comments, Nash telephoned Ronwin and immediaately began shouting at Ronwin and threatening arrest and adamantly refusing to listen to Ronwin's view of the matter." Compl. at ¶ 57. Plaintiff asserts that the purpose of the conduct of Snyder and Nash was "to deny Ronwin due process and equal protection and to violate 42 U.S.C. § 1983 under cover of state law." Id. at ¶ 61.

Defendant Snyder. In order to subject a party to liability under section 1983, plaintiff must establish that the party is a state actor. Scott v. Hern, 216 F.3d 897, 907 (10th Cir. 2000). Snyder argues that plaintiff cannot state a claim against her under § 1983 because she is not a state actor. The Tenth Circuit has stated:

> Where...a § 1983 claim is based on the conduct of a

private individual, that conduct constitutes state action if it is "'fairly attributable to the state.'" [Pino v. Higgs, 75 F.3d 1461, 1465 (10th Cir. 1996), quoting Lugar v. Edmondson Oil co., 457 U.S. 922, 930-32 (1982)]. A private individual's conduct is "fairly attributable to the state "if two conditions are met:

> First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. Second, the private party must have acted together with or...obtained significant aid from state officials or engaged in conduct otherwise chargeable to the State."

Id. quoting Wyatt v. Cole, 504 U.S. 158, 162 (1992).

Snyder did nothing more than to telephone the police with a complaint about plaintiff. The mere furnishing of information to police officers does not constitute joint action under color of state law which renders a private citizen liable under §§ 1983 or 1985. Benavidez v. Gunnell, 722 f.[sic] 2d 615 (10th Cir. 1983). For these reasons, I will recommend that plaintiff's § 1983 claim against her in his Eighth Cause of Action be dismissed.

Defendant Nash. Plaintiff does not specify whether he is suing Nash in her individual capacity, her official capacity or both. In discerning whether a lawsuit is against a defendant personally or in her official capacity, the caption of the suit may be informative but clearly is not dispositive. Pride v. Does, 997 F.2d 712, 715 (10th Cir. 1993). The Supreme

Court has instructed that the "course of proceedings" in cases should be examined by trial courts in an effort to determine the capacity in which a party is sued. Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985). The Tenth Circuit points to two factors that should be considered in making the determination: (1) whether punitive damages are sought, and (2) whether the defense of qualified immunity has been raised. Pride v. Does, 997 F.2d at 715.

In considering the first factor, I note that plaintiff's Complaint reflects that he is seeking "an award of exemplary damages" from Nash. Compl. at 16. In considering the second factor, I note that Officer Nash has raised the defense of qualified immunity. Nash Response at 6. In light of the existence of these two factors, I conclude that the parties have addressed plaintiff's claim against Nash the same as though she has been sued in both her individual and official capacities. However, I conclude that Nash is not liable in her official capacity because plaintiff has failed to allege facts that show that she violated any Constitutional right, and I conclude that Nash is not liable in her individual capacity because she is entitled to qualified immunity.

Official capacity. In order to state a claim against Nash pursuant toi § 1983, plaintiff must allege facts that satisfy the following two requirements for recovery:

> First, the plaintiff must prove that the defendant has deprived him of a right secured by the 'Constitution and laws' of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.

Adickes v. S.H.Kress & Co., 398 U.S. 144, 150 (1970). Section 1983 "does not, standing alone, create any equal or civil rights of citizens; rather, it provides a remedy for rights guaranteed by the Constitution or laws of the United States." Wise v. Bravo, 666 F.2d 1328, 1331 (10th Cir. 1981).

In the circumstances of this present case, plaintiff can establish a violation of § 1983 only if he first establishes a violation of his constitutional rights. However, plaintiff has failed to allege any facts that reflect any violation of his rights to due process or equal protection of the laws.

In his Complaint at ¶¶ 56 to 60, plaintiff alleges that Officer Nash received a report fcrm Snyder, and telephoned plaintiff in response to the report. Plaintiff complains that Nash "began shouting at Ronwin and threatening arrest and adamantly refusing to listen to Ronwin's view of the matter." Plaintiff alleges that the information provided to Nash by Snyder was false to the extent that Snyder related incorrect technical information about the status of plaintiff's insurance policy with State Farm. He asserts that Nash had a duty to listen to his view of the dispute with State Farm, and should have concluded that plaintiff was being harassed by State Farm, not the other way around. Plaintiff claims that "Nash's refusal to listen to Ronwin's view of the matter...and [Nash's] filing a report accusing Ronwin of being an harasser and including in said report false statements about Ronwin's actions amount to a denial of Ronwin's rightgs under the 14th Amendment, U.S. Constitution to due process and equal protection of the law..."

Nothing in plaintiff's recitation of his facts rises to the level of a violation of his Constitutional rights to due process or equal protection of the laws. Plaintiff has not stated whether

his claim under the Due Process Clause is one for a violation of procedural or substantive due process. However, to prevail on either one of them, plaintiff must establish that Nash's actions deprived him of an interest in liberty or property that is subject to protection. Weathers v. West Yuma County Sch.Dist. R-J-1, 530 F.2d 1335, 1340-42 (10th Cir. 1976) (lack of a liberty or property interest foreclosed further inquiry into plaintiff's procedural and substantive due process claims).

Plaintiff has alleged no facts that would reflect an infringement upon his liberty because he has not alleged that he was arrested by Nash, or by any other officer of the Fort Collins Police Department. Plaintiff also has not described any circumstances in his Complaint that would rise to the level of a deprivation of any property interest. In short, plaintiff does not allege any facts that show a violation of his rights under the Due Process Clause. Plaintiff has provided no authority that would support his claim that his Constitutional rights are violated by having a police officer shout at him, or treat him discourteously. Nor has he demonstrated that he has a Constitutional right to have his side of the story heard, considered or believed, or a Constitutional right to have the opposing side of the story disbelieved.

Plaintiff's right to equal protection of the laws would be triggered only if the government treats him differently than another person who is similarly situated. Southern Disposal, Inc. v. Texas Waste Mgmt., 161 F.3d 1259, 1266 (10th Cir. 1998), citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). The Equal Protection Clause does not require that all people be treated identically, Hendking v. Smith, 781 F.2d 850, 851 (llth Cir. 1986), quoting Zeigler v. Jackson, 638 F.2d 776, 779 (5th Cir. 1981); see also

United States v. MacCollom, 426 U.S. 317 (1976) (neither the Equal Protection Clause of the Fourteenth Amendment, nor the counterpart equal protection requirement embodied in the Fifth Amendment, guarantees "absolute equality or precisely equal advantages"). However, if distinctions are made between similarly situated individuals, the distinction must be reasonable, not arbitrary, and rest on grounds having a fair and substantial relation to the object of legislation. Hendking, 781 F.2d at 851. Strict scrutiny of distinctions between individuals is approprite when certain fundamental rights are at stake or when the plaintiff is a member of a protected or suspect class. See, e.g., San Antonio Ind.School Dist v. Rodriquez, 411 U.S. 1 (1973) (fundamental rights); Loving v. Virgina, 388 U.S. 1 (1967) (suspect classification).

Plaintiff has not alleged any facts that would show that he is a member of any class, well enough a suspect class. To allege a violation of the Equal Protection Clause, he "has the burden of demonstrating discriminatory intent" on the part of the government officer about which he makes complaint. Watson v. City of Kansas City, Kan., 857 F.2d 690. 694 (10th Cir. 1988). Plaintiff has not alleged any facts that would show that Officer Nash was motivated in her treatment of plaintiff with any discriminatory intent. In the absence of discriminatory intent, the manner in which Nash related to plaintiff, and the quality of the information she included in her report, become irrelevant for purposes of a lawsuit that is brought pursuant to § 1983 and the Equal Protection Clause.

Individual capacity. Plaintiff has also sued Officer Nash in her individual capacity. In her defense, Nash asserts that she is entitled to qualified immunity.

Qualified immunity is a doctrine which "shields governmental officials performing discretionary functions from individual liability under 42 U.S.C. § 1983, unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." Baptiste v. J.C.Penney Co., Inc., 147 F.3d 1252, 1255 (10th Cir. 1998) (internal quotations and citations omitted). Defendants must make a "prima facie showing of the 'objective reasonableness" of the challenged conduct." Lewis,903 F.2d at 755 (quoting Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642, 649 (10th Cir. 1988)). [sic], Once a defendant raises a prima facie basis for the defense of qualified immunity, plaintiff faces a "heavy" two-part burden to show that (1) the actions of the defendant violated a federal or statutory right, and (2) the right violated was "clearly established at the time of the conduct at issue." Albright v. Rodriquez, 51 F.3d 1531, 1534 (10th Cir. 1995); Baptiste, 147 F.3d at 1255. A right is "clearly established" when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates the right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). If any plaintiff is unable to sustain his burden, the court will find that defendant is immune from liability.

In his Response to this portion of Nash's motion to dismiss, plaintiff states that "his due process and equal protection rights have been denied by Nash's refusal to listen to Ronwin's view of the matter..., that Ronwin was falsely labelled [sic] an harasser in Nash's report.., and that said action was also a defamation of Ronwin." Pltf's Response at 5. Plaintiff has provided no source or authority that would support his assertion that he had a "clearly established constitutional or statutory right" with regard to any of these alleged violations by Nash. If there are any abuses in those activities identified

by plaintiff, they are not premised upon any "statutory or constitutional rights of which a reasonable person would have known." Baptiste, 147 F.3d at 1255.

In summary, plaintiff has alleged no facts that would reflect that Snyder is a state actor, or that she engaged in conduct that otherwise would be chargeable, or fairly attributable, to the State. Plaintiff has failed to allege facts that would support his claim that his rights pursuant to § 1983 were violated by Officer Nash, in her official capacity, and plaintiff has failed to meet his burden to show that Nash is not entitled to qualified immunity in regard to suit against her in her individual capacity. Therefore, I recommend that plaintiff's Eighth Cause of Action against defendants Snyder and Nash be dismissed.

SECTION 1983 CLAIM AGAINST FORT COLLINS

Plaintiff has sued the City of Fort Collins. He alleges that the City "has a policy approved by its executive and legal authorities which amounts to an erroneous interpretation of CRS § 18-9-111 [Colorado's harassment statute], subsections (a) taken with (e)." Compl. at ¶ 63. [Petitioner's note: Ronwin made an error in the designation of the subsections of said statute that was involved, but in his Response corrected the subsection designations, which the magistrate judge should have known].

Legal principles governing municipal liability. Municipalities such as Fort Collins can be held liable in a Section § 1983 action only when an injury was inflicted through a policy or custom that was implemented by the entity. See Valanzuela v. Snider, 889 F.Supp. 1409, 1419 (D.Colo. 1995). "The touchstone of a § 1983 action against a govern-

mental body is an allegation that official policy is responsible for deprivation of rights protected by the Constitution." Id. citing Cannon v. City & County of Denver, 998 F.2d 867, 877 (10th Cir. 1993) (citing Monnell v. Dept. of Social Servs., 436 U.S. 658, 680 (1978). Additionally, a state entity's liability "'may not be premised on employment of a tortfeasor with liability imposed under a respondeat superior theory.'" Valanzuela, 889 F.Supp. at 1419, quoting Cannon v. City & County of Denver, 998 F.2d at 877.

Before the liability of a municipality may be considered, courts must first determine whether any governmental official violated the constitutional rights of anyone. "[I]t would be improper to allow a suit to proceed against the city if it was determined that the officers' action did not amount to a constitutional violation..." Watson v. City of Kansas City, Kan., 857 F.2d at 697, citing City of Los Angeles v. Heller, 475 U.S. 796, 798-99 (1986). The Tenth Circuit has stated that "[a] claim of inadequate training, supervision, and policies under § 1983 cannot be made out against a supervisory authority absent a finding of a constitutional violation by the person supervised." Webber v. Mefford, 43 F.3d 1340, 1344-45 (10th Cir. 1994); see also Myers v. Oklahoma Co. Board of Co. Comm'rs, 151 F.3d 1313, 1316 (10th Cir. 1998) (holding that "a municipality cannot be held liable under section § 1983 for the acts of an employee if a jury finds that the municipal employee committed no constitutional violation"); Trigalet v. City of Tulsa, Okla., 239 F.3d 1150, 1154 (10th Cir. 2001) (holding that municipal liability must be premised upon a predicate constitutional violation by an employee) (citing Myers v. Oklahoma Co.Board of Co.Comm'rs).

The Supreme Court has concluded that municipalities can

be held liable only when an injury is inflicted by the government's "lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" City of St. Louis v. Praprotnik, 485 U.S. 112, 117 (1988) (quoting Monnell v. New York City Dept. of Soc. Services, 436 U.S. 658, 694 (1978). The Court explained that requiring a plaintiff to "[l]ocate a 'policy' ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality," Board of County Commissioners of Bryan county, Okla. v. Brown, 520 U.S. 397, 403-04 (1997) (citation omitted).

If an alleged violation "cannot be characterized as official policy then [a city] can still be liable if the practice is 'so permanent and well settled as to constitute a custom or usage with the force of law.'" Lankford v. City of Hobart, 73 F.3d 283, 286 (10th Cir. 1996) (quoting Adickes v. S.H.Kress & Co., 398n [sic] U.S. 144, 168 (1970). "In order to establish a custom, the actions must be persistent and widespread...practices fo city officials.'" Lankford, 73 F.3d at 268 (quoting Starrett v. Wadley, 876 F.2d 808, 818 (10th Cir. 1989)). Proof of random acts or isolated incidents is not sufficient to show the existence of a custom. See Praprotnik, 485 U.S. at 131 (Brennan, J., concurring).

In addition to proving the existence of a policy, a plaintiff must also allege facts that demonstrate that the municipality's action or inaction resulted from "deliberate indifference to the rights of the plaintiff." Jenkins v. Wood, 81 F.3d 988, 994 (10th Cir. 1996). To satisfy this requirement, a plaintiff must show that the municipality's action or failure to act "reflects a 'deliberate' or 'conscious' choice by a municipality." City of Canton v. Harris, 489 U.S. 378, 389 (1989).

"Deliberate indifference" can be shown when "the municipality ha[d] actual or constructive notice that its action or failure to act [wa]s substantially certain to result in a constitutional violation, and it nonetheless consciously or deliberately cho[se] to disregard the risk." Barney v Pulsipher, 143 F.3d 1299, 1307 (10th Cir. 1998). To prove "constructive notice" of constitutional misconduct, the plaintiff must show that the underlying unconstitutional misconduct was "so widespread or flagrant that in the proper exercise of its official responsibilities the governing body should have known of it." Jojola v. Chavez, 55 F.3d 488, 491 (10th Cir. 1995) (citation and intenal citations omitted).

Finally, in addition to all of the above, a plaintiff must allege and prove facts with regard to causation. The Supreme Court has stated that a plaintiff must demonstrate that "the municipality was the 'moving force' behind the injury alleged. That is, a plaintiff must...demonstrate a direct causal link between the municipal action and the deprivation of federal rights." Brown, 520 U.S. at 404; see also Pembaur v. City of Cincinnati, 475 U.S. 469, 483 (1986). To be the "moving force," there "must at least be an affirmative link between...inadequacies alleged and the particular constitutional violation at issue." Oklahoma City v. Tuttle, 471 U.S. 808, 824 N.8 (1985).

Plaintiff's failure to state a claim against Fort Collins. First, plaintiff cannot state a claim against the City of Fort Collins because, as the above discussion reflects, plaintiff has not alleged facts that would demonstrate that the City's employee, Officer Nash, violated any constitutional right. The Court cannot allow a suit to proceed against the City once it has been determined that the officer's action did not amount to a constitutional violation..." Watson v. City of

Kansas City, Kan., 857 F.2d at 697, citing City of Los Angeles v. Heller, 475 U.S. 796, 798-99 (1986). A police officer does not violate the Constitution merely by suggesting to someone that his conduct could constitute a violation of law, even if the officer addresses the party in a loud or angry tone. Even if Officer Nash, in fact, did violate plaintiff's Constitutional rights, plaintiff still cannot establish liability with regard to the City because he has failed to allege facts that show that the incident was anything more than a "random [or] isolated incident[]." [sic], Praprotnik, 485 U.S. at 131 [Brennan, J., concurring).

Second, plaintiff alleges that Fort Collins has adopted a policy in regard to the interpretation of harassment, but but [sic] his allegation is merely conclusory. He cannot state a claim merely by referring to the fact that a municipal policy in regard to harassment may exist. As the cases above hold, he must also allege facts (a) that demonstrate the actual existence of such a policy; (b) that demonstrate that the policy is the result of a decision that was made by its duly-constituted legislative body, or by those officials whose acts fairly may be said to be those of the municipality; (c) that the decision by the municipality to implement the policy was the result of "'deliberate indifference' to the rights of the plaintiff, or, if not a deliberate decision by the municipality, then the municipality was on "constructive notice" that the implementation of the policy was "substantially certain to result in a constitutional violation;" and (d) that the adoption of the policy was the cause of plaintiff's injuries.

Plaintiff has alleged no facts that reflect the existence of any such policy. He claims that when Officer Nash spoke to him on the telephone, urging plaintiff to cease his repeated telephone calls to the State Farm office, she wrongfully in-

terpreted Colorado's harassment policy, and did so pursuant to a policy of the City. Plaintiff's disagreemente with Nash's interpretation of a statute hardly elevates Nash's opinion to the level of municipal policy. Considering the particular facts placed before her by Terri Snyder, Nash did nothing more than conclude that the harassment statute could apply to those facts. Nothing in plaintiff's allegations reflects that she applied this reasoning pursuant to any policy.

SUMMARY REGARDING DEFENDANTS' MOTIONS TO DISMISS

Plaintiff has failed to state claims against any of the individuals that he has named in this lawsuit. Therefore, I recommend that all four of the motions to dismiss filed by defendants (numbers 1 through 4 above) be granted, and this case dismissed.

PLAINTIFF's MOTION FOR PERMISSION TO AMEND THE COMPLAINT

Plaintiff has filed a motion in which he seeks permission to amend his Complaint. He states that the amendment is sought "to assure maximum clarity in pleading the claims in the Complaint..." Pltf's Mtn to Amend at 1.

All of the defendants object to plaintiff's motion for generally the same reasons: (a) plaintiff did not meet and confer pursuant to D.C.COLO.L.CivR 7.1A; (b) plaintifff did not provide with his motion a copy of any amended complaint that he was tendering to the Court; and (c) the filing of his motion would be futile because "plaintiff cannot identify in [his] motion any facts that would cure the fatal deficiencies described in Allstate's motion to dismiss." Allstate Resp. at

2.

Plaintiff replied to Allstate's motion to dismiss by saying, "[t]he alleged 'fatal deficiencies' do not exist since Ronwin's Response to Allstate's motion to dismiss provided the explanations, based on the facts alleged in the Complaint, which show that the claims in the Complaint contain adequate facts to allow the Defendants, including Allstate, to know what claims are being made against them and why." Pltf's Reply at ¶ 5, emphasis in the original. Plaintiff devotes the balance of his Reply to rehashing the arguments that he presented in his responses to the various motions to dismiss.

Fed.R.Civ.P. 15(a) provides that leave to amend "shall be freely given when justice so requires." A motion to amend falls within the discretion of the trial court. T.V. Communications Network, Inc. v. Turner Network Television, Inc., 964 F.2d 1022, 1028 (10th Cir. 1992), cert. denied, 113 S.Ct.601 (1992). "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." Frank v. U.S. West, 3 F.3d 1357, 1365 (10th Cir. 1993).

Any effort by plaintiff to amend his Complaint would be futile. Plaintiff's claims are not defective for the reason that he inadvertently failed to allege certain facts to support parts of the claims that he asserts. His claims are defective because his lengthy narrative of the events that transpired reflects that no facts exist that would give rise to any liability on the part of any of the defendants under the claims alleged by plaintiff. A fair reading of his Complaint and his detailed responses to the motions to dismiss leads to the conclusion that no claims

exist that could be premised upon the facts that he has presented. In brief, the insurance companies are immune from suit under his state law claims, and can have no liability under plaintiff's RICO claims in the circumstances he presents. Plaintiff has failed to state a claim for intentional infliction of emotional distress because reasonable minds could not conclude that the conduct he alleges rises to the level of that offense, and he has failed to state a claim for "contributing to a defamation" because no such tort exists. Ms Snyder will never have any exposure under his § 1983 claim because she is not a state actor, and Officer Nash both did not commit any constitutional violation, and is otherwise entitled to qualified immunity. Finally, because Officer Nash did nothing that violates the Constitution, the City of Fort Collins can never be subjected to any liability iunder § 1983.

In short, the circumstances and scenarios described by plaintiff in his Complaint and responses do not yield any viable claims, and any amendments he would tender would be futile. For all of the above reasons, I recommend that Judge Nottingham deny plaintiff's Motion to Amend.

PLAINTIFF'S "MOTION TO SANCTION JON F. SANDS FOR VIOLATION OF FRCP, RULE 11"

Jon F. Sands is counsel for State Farm, Lawser and Snyder. Plaintiff has filed a motion in which he asks that Mr. Sands be sanctioned for including in State Farm's Motion to Dismiss "irrelevant matter attacking Ronwin personally and based on false statements or matters not admitted in the decisions because the thrust of the decisions would thereby be destroyed." Pltf's Mtn for Sanctions at 1.

The matters referred to by plaintiff are the three cases that

were provided to this Court by Mr. Sands. I presented the three cases in this Recommendation/Order in the above section where I discussed plaintiff's status as a pro se litigant. The cases contained discussions by the Arizona and Iowa Supreme courts of plaintiff's mental illness and his abusive litigation habits. The cases also informed me of plaintiff's status as an attorney, or former attorney. Based upon those cases, I concluded that plaintiff is not entitled to a liberal construction of his pleadings pursuant to the principles announced in Haines v. Kerner.

Viewing the totality of the circumstances that are described by plaintiff in his Complaint, I conclude that no reasonable person would be so offended by the actions and conduct of defendants that he would file a federal lawsuit. The three cases that discuss his history of mental illness and abusive litigation habits provide a possible explanation as to why plaintiff would do so.

Plaintiff's history of mental illness does not excuse the filing by him of this rather silly case. Even a mentally ill person should be held accountable when he files a lawsuit that causes defendants to hire lawyers who must prepare and present motions to the court in efforts to defend against claims, even if the claims are bogus.

In his motion for sanctions, plaintiff takes issue with the facts and conclusions that are reached by the Iowa and Arizona Supreme courts. However, and contrary to plaintiff's opinion, Mr. Sands is correct when he states that "[p]eople who are sued by one who has been found by other tribunals to have a history of serious frivolous litigation have every right, and even a responsibility, to bring such relevant history to the attention of the Court." State Farm Resp. at 9.

Despite plaintiff's disputes with the conclusions reached by the courts in those cases, this Court is entitled to rely upon the veracity and validity of their proceedings. See Green v. Nottingham, 90 F.3d 415, 418 (10th Cir. 1996) ("We take judicial notice that Mr. Green has had three actions or appeals in courts of the United States dismissed as frivolous or malicious."); see also St.Louis Baptist Temple, Inc. v. F.D.I.C., 605 F.2d 1169, 1172 (10th Cir. 1979) (federal courts may take notice of judicial proceedings in other courts if they have a direct relation to matters at issue). The proceedings in Arizona and Iowa demonstrate that plaintiff has a long history of engaging in abusive litigation. "The prosecution of baseless lawsuits and the filing of frivolous papers are matters of legitimate concern to the federal courts and are abuses that Rule 11 were designed to deter." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 411 (1990) (Stevens, J. concurring).

In summary, plaintiff has described no conduct by Mr. Sands that would in any way subject him to sanctions. I will enter an Order that denies plaintiff's motion.

PLAINTIFF'S MOTIONS SEEKING REIMBURSEMENT FROM INSURANCE COMPANIES FOR COSTS

Plaintiff has filed two motions in which he seeks reimbursement from each of the insurance company defendants. Plaintiff asserts in his two motions that he is entitled to be reimbursed for the costs and the legal fees that he incurred in obtaining service upon the defendants, because defendants refused or neglected to cooperate with the provisions for "waiver of service" pursuant to Fed.R.Civ.P. 4(d)(2). Because the two companies are in different postures in regard to these motions, I will discuss the motions separately.

Allstate. Rule 4(d)(2) sets forth a procedure for asking defendants to waive formal service, and provides that a defendant who refuses to provide a waiver without good cause must bear the costs of effecting formal service. Allstate does not dispute plaintiff's entitlement to reimbursement for the costs of service. However, Allstate claims, and plaintiff admits, that Allstate paid to plaintiff the sum that he sought as reimbursement for the costs of serving the summons and complaint, $43.80.

Plaintiff makes explicit in his Reply that Allstate's payment is not good enough, because "[i]nstead of sending the check promptly, Ronwin's inquiries about the check were ignored." Pltf's Reply at 1. Plaintiff states that the failure by counsel for Allstate to send the check in a timely fashion "has been abominable," and urges the Court to impose sanctions against Allstate "in lieu of attorney's fees." Id. at 2.

Although plaintiff may be an attorney, as a pro se party, attorney or not, he is not entitled to legal fees. Turman v. Tuttle, 711 F.2d 148, 149 (10th Cir. 1983); Smith v. Furlong, 976 P.2d 889, 890 (Colo.App. 1999); see also Kay v. Ehler, 499 U.S. 432, 437 (1991). I fail to see how sanctions would be appropriate merely because Allstate was tardy in reimbursing plaintiff the sum of $43.80, especially since plaintiff has provided no evidence that the deprivation of that sum caused any prejudice.

In summary, with regard to the costs that are allowed to parties under Fed.R.Civ.P. 4(d)(5), the same have been paid to plaintiff, and the matter is resolved. Plaintiff's motion against Allstate will be denied.

State Farm, Lawser and Snyder. Plaintiff asserts in his mo-

tion in regard to the State Farm defendants that he has incurred costs and attorneys fees in the total amount of $313.31, of which $200.00 is the amount that he believes represents "time spent on motion" at $100.00 per hour. Pltf's Mtn for Reimb. at 2. As noted in the preceding paragraph, plaintiff is not entitled to any amount for fees, whether the fees are denominated as "sanctions" or as fees. I consider plaintiff's motion for reimbursement to be a motion that seeks recovery of $113.31 as the actual costs incurred in obtaining service upon State Farm and the two representatives.

State Farm presents two reasons as to why it believes that plaintiff is not entitled to his costs, at least not at this time: (a) plaintiff has not shown that he has complied with the provisions of Fed.R.Civ.P. 4(d)(2)(A), and (b) plaintiff may only recover these costs "as costs" in the event that he prevails in this case. I agree that plaintiff has not provided any proof with regard to his compliance with the provisions of Rule 4(d)(2)(A), and I will deny his motion for that reason.

Rule 4(d)(2)(A) provides that a plaintiff may obtain a waiver of service from a defendant, and to do so, "the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons." Fed.R.Civ.P. 4(d)(2)(A). With his motion for reimbursement, plaintiff attached copies of the returns of service that reflect that he arranged for a process server to personally serve these defendants with the summons and complaint. However, plaintiff did not attach any documentation that would prove that he sent his requests for waiver of service to the defendants. In the absence of such proof, I cannot find that he complied with the provisions of the rule. In discussing the various means of transmitting requests for waiver of service, including electronic or facsimile, Wright and Miller

state:

> Rule 4(d)(2)(B) requires the serving party to send the request by first class mail or "other reliable means." *** The [Advisory] Committee advises that the sender of such a communication should maintain a record of the transmission for purposes of proof of service in case the defendant denies receipt.

4A Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1092.1 (2002); see also, McGann v. New York, 77 F.3d 672 (2d Cir. 1996) (holding that service of waiver documents on defendant was ineffective because plaintiff failed to include an acknowledgement form, even if the defendant actually received the summons and complaint); Durrett v. Leading Edge Prod., Inc., 965 F.Supp. 280 (D.Conn. 1997) (holding that plaintiff's failure to include a waiver form with the copy of the summons and complaint was fatal to plaintiff's attempted service).

In summary, plaintiff has been paid by Allstate for the costs that he incurred in serving that company, and for that reason his motion for reimbursement from Allstate will be denied. Plaintiff has failed to provide proof that he served the State Farm defendants with the waiver documents that he alleges that he mailed, and for that reason his motion for reimbursement from the State Farm defendants will be denied.

DEFENDANT NASH'S MOTION FOR STAY

In the body of the "Combined Reply of Nash and Fort Collins" that was filed on November 3, 2003, defendant Nash moved the Court for a stay of all proceedings pending

the resolution of Nash's argument that she is entitled to qualified immunity. Although Nash was entitled to such a stay, she violated our local rule by including her request for such relief inside of a Reply. D.C.COLO.LCIVR 7.1C ("A motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate paper."). At any rate, Nash's motion is now moot, and, because no discovery has been conducted pending the resolution of all of the above motions, Nash has indirectly received the benefits of the stay that she requested.

CONCLUSION

RECOMMENDATIONS:

I RECOMMEND that Judge Nottingham GRANT the following motions to dismiss, and enter an order dismissing the case, and I RECOMMEND that he deny plaintiff's Motion for Permission to Amend as futile:

1. "Defendant Allstate Insurance Company's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)" [filed November 10, 2003];
2. "Motion of Defendants State Farm Mutual Automobile Insurance Company, David Lawser and Terri Rene Snyder to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)" [filed October 6f, 2003]
3. "Motion to Dismiss Eighth Cause of Action by Defendant Heidi Nash" [filed October 9, 2003];
4. "Motion to Dismiss Ninth Cause of Action by Defendant City of Fort Collins" [filed October 9, 2003];
5. "Plaintiff's Motion for Permission to Amend the Complaint" [filed November 20, 2003];

ORDERS:

It is hereby ORDERED AS FOLLOWS:

6. Plaintiff's "Motion to Sanction Jon F. Sands for Violation of FRCP, Rule 11" [filed November 10, 2003] is DENIED.

7. Plaintiff's "Motion Seeking Reimbursement from Defendant Allstate Ins. Co. for Costs of Service of Summons and Complaint" [filed October 31, 2003] is DENIED;

8. Plaintiff's "Motion Seeking Reimbursement from Defendants State Farm, [etc.], for Service of Summons and Complaintf" [filed October 30, 2003]; is DENIED;

9. "Nash Motion to Stay," included with "Combined Reply of Nash and Fort Collins" [filed November 3, 2003] is DEEMED MOOT.

Dated at Denver this day of September 29, 2004

BY THE COURT:
/s/ O. Edward Schlatter
O. Edward Schlatter, U.S. Magistrate Judge

ADVISEMENT UNDER FED.R.CIV.P.72

Be advised that all parties shall have ten (10) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed.R.Civ.P. 72. The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from de novo determination by the

District Judge of the proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within ten (10) days after being served with a copy may bar the aggrieved party from appealing the factual and legal findings of the Magistrate Judge that are accepted or adopted by the District Court. Thomas v. Arn, 474 U.S. 140, 155 (1985); Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991); Niehaus v. Kansas Bar Ass'n., 793 F.2d 1159, 1164 (10th Cir. 1986).

[Petitioner's Note: The District Court barred submission of any objections to the magistrate judge's recommendations, Appendix, p. 27-28].

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-1528(OES)

EDWARD RONWIN, filed Oct 1, 2004

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, an Illinois corporation, et al.,

Defendants.

MINUTE ORDER CORRECTING RECOMMENDATION

Entered by O.Edward Schlatter, United States Magistrate Judge

The Recommendation That Defendant's Motions to Dismiss be Granted and Orders Denying Plaintiff's Motions, filed September 29, 2004, contains a typographical error on page 2, in the first sentence of the second paragraph. The sentence currently reads, "All of the plaintiffs have filed motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(6)." The sentence should read, "All of the defendants have filed motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(6)."

The error is hereby noted for and corrected on the record. [Petitioner's Note: document not signed by anyone]

XXXXXXXXXXXXXXXXXXXXXXXXX

United States Constitutional Provisions

Article III, § 1:

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuence in Office.

First Amendment:

Congress shall make no law respecting an establishment of

religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Fourteenth Amendment; § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Statutes:

18 U.S.C. § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme orf artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises...places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Colorado State Statutes:

CRS 18-8-111(1)(C) and (2)

(1) A person commits false reporting to authorities, if:

(C) He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he

or she has no such information or knows that the information is false; or...

(2) False reporting to authorities is a Class 3 misdemeanor.

CRS 42-4-1409 Compulsory insurance - penalty

(1) No owner of a motor vehicle required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this state when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by law.

Supreme Court, U.S.
FILED
SEP 23 2005
OFFICE

No. 05-256

IN THE

Supreme Court of the United States

OCTOBER TERM, 2005

EDWIN RONWIN,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY, *ET AL.*,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS

RESPONDENT ALLSTATE INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether it is unconstitutional for federal courts to rule on motions without oral argument?

2. Whether the District Court and the Tenth Circuit appropriately dismissed Petitioner's lawsuit for failure to state a claim?

CORPORATE DISCLOSURE

Pursuant to Supreme Court Rule 29.6, Respondent states that Allstate Insurance Company is a wholly-owned subsidiary of The Allstate Corporation. There is no corporation that owns 10% or more of the stock of The Allstate Corporation.

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OPINIONS BELOW

On September 29, 2004, the Magistrate Judge entered a detailed Recommendation, concluding that the District Court should grant Motions to Dismiss Ronwin's Complaint filed by Allstate Insurance Comp. State Farm Insurance Company, two representatives of State Farm, the City of Fort Collins, and a Fort Collins Police Officer. Pet. App. 31-79. On October 1, 2004 the Magistrate Judge revised this Recommendation to correct a typographical error. Pet. App. 79-80. On September 30, 2004, the District Court entered its Order granting the Motions to Dismiss, for the reasons set forth in the Magistrate Judge's Recommendation. Pet. App. 26-28.

On June 7, 2005, the Tenth Circuit entered its Order and Judgment affirming the dismissal of Petitioner Ronwin's claims for the same reasons set forth in the Magistrate Judge's Recommendation. Pet. App. 23-25.[1] Further, the Tenth Circuit ordered Ronwin to show cause why he should not be sanctioned for filing a frivolous appeal. Pet. App. 24-25. On June 28, 2005, the Tenth Circuit entered an Order denying Ronwin's petition for rehearing and discharged the show cause order. Pet. App. 25-26.

STATUTES AND RULES INVOLVED

In addition to Petitioner Ronwin's constitutional provisions and statutes, Federal Rule of Civil Procedure 12(b)(6) states:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the

---

[1] Because both the Tenth Circuit and District Court affirmed for the reasons set forth in the Magistrate Judge's Recommendation, Allstate cites herein to the Magistrate Judge's Recommendation.

> option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted[.]

Federal Rule of Civil Procedure 78 states:

> Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.
>
> To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

United States District Court of the District of Colorado Local Rule 7.1(G) states:

> A motion may be decided on the papers unless oral argument, at the court's discretion, is ordered.

Federal Rule of Appellate Procedure 34(a)(2) states:

> Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any

of the following reasons: (A) the appeal is frivolous; (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

STATEMENT OF THE CASE

Plaintiff Edward Ronwin sued Allstate Insurance Company, State Farm Insurance Company, two representatives of State Farm, a Fort Collins police officer, and the City of Fort Collins. Ronwin brought his lawsuit in federal district court against Allstate based on the time he expended to communicate with Allstate regarding the cancellation of his automobile insurance policy. He received a cancellation notice in the mail from Allstate shortly after he verbally cancelled his insurance. The cancellation notice notified him of an amount due to continue the insurance. Ronwin had already elected not to renew the policy. He therefore never paid any further premium to Allstate, and acknowledged in the District Court below that Allstate withdrew any request or demand for the renewed amount. He nonetheless sued Allstate because Allstate mailed him a cancellation notice stating a renewal amount after he already told Allstate he was canceling the policy. He alleged that Allstate committed an unlawful act and was trying to extort money.

Ronwin filed claims against Allstate for violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 *et seq.* ("CCPA"), the Colorado common law torts of deceptive trade practices and intentional infliction of emotional distress, and the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"). All of these claims allegedly arose out of his written and oral communications with Allstate concerning the termination of his insurance policy.

Ronwin filed these same claims against State Farm and two of its employees, and added a claim against them for defamation regarding his communications with State Farm over the termination of his State Farm insurance policy. He filed a claim pursuant to 42 U.S.C. § 1983 against one of State Farm's employees, Terri Snyder, and a Fort Collins police officer, Heidi Nash. He filed claims against the City of Fort Collins for denial of equal protection and due process.

All of the Defendants filed Rule 12(b)(6) motions to dismiss. The Magistrate Judge recommended that the District Court dismiss all of Ronwin's claims for failure to state a claim. Pet. App. 31-79. Because the District Court had already started its own review of the case when the Magistrate Judge issued the Recommendation, the District Court immediately accepted the Magistrate's Recommendation and dismissed the case with prejudice. Pet. App. 26-28.

Both the Magistrate Judge and the District Court correctly dismissed Ronwin's claims with prejudice, and the Tenth Circuit correctly affirmed that dismissal. Pet. App. 23-25.

REASONS THE PETITION SHOULD BE DENIED

Pursuant to Supreme Court Rule 10, a "petition for writ of certiorari will be granted only for compelling reasons." In making such determination, this Court considers whether:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter . . . (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort . . . [or] (c) a state court or a United States court of appeals has decided an important question of

federal law that has not been, but should be, settled by this Court.

Ronwin's Petition involves none of these considerations. Ronwin petitioned this Court for review claiming he was denied various constitutional rights because he was not granted oral argument in either court below. Additionally, it appears that he has petitioned this Court for review of the Tenth Circuit's ruling that all of his state law claims were barred by Colorado Revised Statute § 10-4-607, and for a substantive review of his claims under RICO. This Court should deny the Petition because: no Rule 10 consideration is at issue; it is well-established that there is no constitutional right to oral argument; and the Tenth Circuit properly dismissed all of Ronwin's claims.

I. DISPOSITION OF CASES WITHOUT ORAL ARGUMENT IS NOT UNCONSTITUTIONAL.

With references to "Star Chamber" proceedings, Ronwin alleges that the District Court and Tenth Circuit's failure to hold oral argument was unconstitutional. Ronwin alleges that this failure violates "several provisions of the U.S. Constitution," such as the First and Seventh Amendments, and due process and equal protection under the Fifth and Fourteenth Amendments. Pet. at 8-9. Ronwin's claim is without merit and does not warrant certiorari review.

A party does not have a constitutional right to present oral argument on motions in federal district courts. *See Hazen v. Southern Hills Nat. Bank of Tulsa,* 414 F.2d 778 (10th Cir. 1969) (district court did not abuse its discretion in not permitting oral argument since parties filed comprehensive briefs); *Wilkins v. Rogers,* 581 F.2d 399 (4th Cir. 1978) (district court did not deny plaintiff due process by failing to allow oral argument before ruling on motions to dismiss); *Morrow v. Topping,* 437 F.2d 1155, 1156 (9th Cir. 1971) (rejecting due process claim); 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 3091 at 450-51 & n.1 (2d ed. 1997).

Moreover, Federal Rule of Civil Procedure 78 provides that "a court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition." Accordingly, the United States District Court for the District of Colorado enacted Local Rule 7.1(G), which provides that a "motion may be decided on the papers unless oral argument, at the court's discretion, is ordered." Under the Rules, it is within a district court's discretion to order oral argument, and federal courts have held repeatedly that the exercise of this discretion does not violate a party's constitutional rights.

Additionally, a party does not have a constitutional right to present oral argument in federal courts of appeal. *See, e.g., Sarelas v. Porikos*, 320 F.2d 827, 828 (7th Cir. 1963) (holding denial of a hearing does not deprive a party of any constitutional rights); *United States Fidelity & Guaranty Co., v. Lawrenson*, 334 F.2d 464, 467 (4th Cir. 1964) (holding a court cannot grant a hearing on every motion filed, since those of a frivolous nature would impede the progress of those which are meritorious). Federal Rule of Appellate Procedure 34(a)(2) accordingly provides a means for the Tenth Circuit to efficiently and effectively decide appeals without oral argument.

The case Ronwin cites, *Goldberg, Commissioner of Social Servs. of the City of N.Y. v. Kelly, et. al.*, 397 U.S. 254 (1970), does not change the foregoing case law or rules. In *Goldberg*, this Court held that an evidentiary hearing was necessary before terminating welfare benefits due to the purpose of welfare benefits, and their importance for daily subsistence. *Id.* at 264-65. The basis for the hearing turned on the fact that welfare benefits were at issue. *Goldberg* is inapplicable here, where Ronwin's request for oral argument was not to argue against a denial of benefits for his subsistence, but to further expound on arguments concerning routine civil claims for damages about which he had already argued extensively in numerous briefs.

While Allstate did not locate a case from this Court squarely addressing whether there is a constitutional right to oral argument in

a civil case, this Court has addressed the issue in a criminal case, *Herring v. New York*, 422 U.S. 853, 863 n.13 (1975), and in the context of administrative proceedings. *See FCC v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 275-78 (1949). In *Herring*, this Court held that while there is a federal constitutional right to give closing argument in a criminal case, there is *no* federal constitutional right to oral argument at other stages of the trial or appellate process. 422 U.S. at 863 n. 13. In the *FCC* case, this Court held that there is no constitutional right to oral argument in all administrative proceedings, because Congress has "wide discretion" in creating administrative, as well as judicial, procedures. 337 U.S. at 275-76. Congress does not require oral argument in all judicial proceedings, and in fact, has established rules giving the courts power to dispense with oral argument where courts conclude it is appropriate to do so. *See supra*.

All of the foregoing authority makes clear that there is no constitutional right to oral argument. Further, the Rules of Civil and Appellate Procedure properly provide district and appellate courts with the authority to forego oral argument when they conclude that oral argument would not assist them, or would otherwise impair the efficient and effective disposition of cases. As a result, this Court should deny the Petition on the first question presented by Ronwin.

II. THE TENTH CIRCUIT AND THE DISTRICT COURT PROPERLY DISMISSED RONWIN'S CLAIMS.

The Tenth Circuit affirmed the District Court's proper dismissal of Ronwin's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). Pet. App. at 24. First, the lower courts correctly ruled that pursuant to Colorado Revised Statute § 10-4-607, Allstate is immune from all state-law claims arising out of communications related to the cancellation of an insurance policy.[2] Pet. App. at 42-43. Second, the lower courts correctly ruled that Ronwin has no

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[2] Both the District Court and the Tenth Circuit found that even if this statutory immunity did not apply, Ronwin's state-law claims failed on their merits. Because Ronwin has not sought certiorari on that issue, Allstate does not address the merits of his state-law claims.

standing to bring a RICO claim, and cannot establish a predicate act or a pattern of racketeering as the statute requires. Pet. App. at 50-54.

A. The Lower Courts Properly Found That Allstate Was Immune From All Of Ronwin's State-Law Causes Of Action.

In reviewing a Rule 12(b)(6) motion to dismiss in the context of qualified immunity, a court should not dismiss a complaint unless it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Peterson v. Jensen*, 371 F.3d 1199, 1201 (10th Cir. 2004) (citation omitted). Even under that standard, the Tenth Circuit correctly found Allstate immune from Ronwin's state-law claims.[3]

The District Court and the Tenth Circuit found Allstate immune from Ronwin's state-law causes of action because Colorado Revised Statute § 10-4-607 is inapplicable to Allstate's cancellation notice. Pet. App. at 24, 27, 42-43. Ronwin alleges that because he had verbally notified Allstate that he would not be insured by Allstate after his auto insurance policy terminated on May 23, 2002, Allstate could not subsequently send him a cancellation notice, and thus the statute does not apply. Pet. at 14. The statute's plain language demonstrates the fallacy of his argument.

All of Ronwin's state-law claims against Allstate arise from oral and written communications between Allstate and him regarding the cancellation or non-renewal of his automobile insurance. Allstate followed Colorado law in mailing a cancellation notice to Ronwin, and withdrew its request for any further premium based on Ronwin's contacts with it about that notice and his decision not to

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[3] Federally-created causes of action, such as RICO, cannot be restricted by state laws or rules relating to immunity. *Smith v. Losee*, 485 F.2d 334, 341 (10th Cir. 1973). Thus, the lower courts dismissed Ronwin's RICO claim on its merits, not pursuant to the state statute discussed herein. *See* Section II.C., *infra*.

renew his policy. Colorado Revised Statute § 10-4-607 provides that Allstate is immune from suit under these circumstances:

> **Immunity**. *There shall be no liability on the part of, and no cause of action of any nature shall arise against,* the commissioner or against *any insurer,* its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to the reasons for cancellation or nonrenewal, or *for any statement made* by any of them *in any written notice of cancellation or notification of reason for nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information with respect thereto,* or for statements made or evidence submitted at any hearings conducted in connection therewith.

(Emphasis added). The lower courts were thus correct in finding that the statute "encompasses the conduct of the insurance companies." Pet. App. at 43.

Moreover, Colorado law mandates that no insurer shall refuse to renew a policy of automobile insurance unless the company provides thirty days' advance written notice of its intention not to renew. Colo. Rev. Stat. § 10-4-604(1) (exceptions exist for non-payment of premium, which is not an issue here).

All of Ronwin's state-law claims against Allstate concern written or oral communications between Allstate and him about his decision to cancel his Allstate automobile insurance, Allstate's notice of cancellation/renewal of that policy, and Allstate's withdrawal of its request for any further premium. Pet. at 10-14. The notice, with absolute accuracy, informed Ronwin that if he

elected not to pay the minimum renewal payment during the specified grace period, his policy would be cancelled. While the notice did not say that the cancellation would be effective as of the policy's termination date, it did say that if he had any questions about the cancellation notice, he should contact his agent or produce of record as soon as possible. Ronwin did have questions, and obviously an objection to the notice, and did call Allstate. In response to his contacts, Allstate made clear that because of 1) his prior call in which he said he was canceling his policy, and 2) his further contact in which he indicated that he would not pay the grace-period renewal premium or continue as an Allstate insured, his policy terminated effective May 23, 2002, the original termination date. Allstate has immunity as to all of these written and oral communications. Colo. Rev. Stat. § 10-4-607.

Moreover, as the Magistrate correctly found in the Recommendation ultimately adopted by the Tenth Circuit, the statute's applicability is not limited to information furnished only during the policy period, or to information furnished during some undefined and indefinable period before an insured calls to say he is canceling his policy. *See* Pet. App. at 43-44.

B. There is No Basis To Hold The Colorado Statute Unconstitutional.

In one paragraph, Ronwin alleges that Colorado Revised Statute § 10-4-607 is unconstitutional because it confers "absolute" immunity on insurance companies. Pet. at 14-15. First, Ronwin did not raise this issue until he filed his Tenth Circuit reply brief. As a result, it was not properly raised below and is therefore waived. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002).

Second, there is no basis for finding Section 10-4-607 unconstitutional. Contrary to Ronwin's assertions, Section 10-4-607 only grants immunity to insurers for oral or written statements concerning cancellations or nonrenewals of insurance. Insurers remain subject to a wide variety of suits for other alleged acts and omissions. Moreover, the Federal and State legislatures may and have granted qualified immunity to non-governmental persons and

entities besides insurers in a variety of circumstances. *See, e.g.,* Fair Credit Reporting Act, 15 U.S.C. § 1681h(e) (2005) (granting qualified immunity to consumer credit reporting agencies); Colo. Rev. Stat. § 12-36.5-105 (2005) (granting qualified immunity to members of healthcare professional review committees, witnesses before such committees, and any person who files complaints with such committees).

In summary, the lower courts' dismissal of all of Ronwin's state law claims on grounds of qualified immunity was correct, and this Court should deny the Petition as to the state-law claims addressed in the second question presented by Ronwin.

C. The District Court Correctly Held that Ronwin Failed to State a RICO Claim.

Allstate sent Ronwin a routine cancellation notice in the mail with an invoice for the payment he would have to make to continue his coverage after the policy termination date and during the renewal period. Ronwin alleges that the notice was tantamount to Allstate's refusal to honor his oral notification that he was canceling his policy. Pet. at 10-12. In conclusory allegations, he contends that this constitutes "attempted extortion" and "criminal fraud" because Allstate is hoping that insureds who have "average or below average intelligence" will "be taken in by fear of exposure . . . if they fail to obtain replacing insurance, or, . . . may come to think they actually owe the monies demanded[.]" Pet. at 13. The Magistrate Judge, the District Court, and Tenth Circuit all correctly held that these unwarranted inferences were insufficient to withstand Allstate's motion to dismiss. Pet. App. at 24, 27, 50-54.

RICO authorizes a private civil action by any person injured in his business or property by reason of a violation of 18 U.S.C. § 1962. 18 U.S.C. § 1964(c). To state a claim under Section 1962, a plaintiff must show that the (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity, (5) injured his business or property. 18 U.S.C. § 1962. Ronwin failed to establish that he has standing to bring his RICO claims and also failed to state

a claim for relief under RICO. Therefore, the Tenth Circuit's decision affirming the dismissal of his RICO claim was correct.

1. Ronwin has no standing to bring a RICO claim.

Private litigants have standing under RICO only to the extent that they have been injured in their business or property by conduct constituting a RICO violation. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). The showing of injury requires proof of a concrete financial loss, and not mere injury to a valuable intangible interest. *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990) (company directors could not maintain RICO action against insurers who cancelled their liability policies, because directors had incurred no actual expenses as a result of the cancellation).

Here, the lower courts correctly found that Ronwin has not and cannot allege any concrete financial loss. Pet. App. at 52. Ronwin's only allegation of injury is that he spent time communicating with Allstate after he received his cancellation notice in the mail. Pet. at 10-12. Such an investment of time does not give rise to a viable RICO claim. *Berg*, 915 F.2d at 464.

Further, even if he believes Allstate's intent in providing him with the cancellation/renewal notice and related invoice was to harass or intimidate him, Ronwin has failed to state a claim under RICO. *See, e.g., Rylewicz v. Beaton Servs. Ltd.*, 888 F.2d 1175, 1178-80 (7th Cir. 1989) (defendants' harassment and intimidation of litigants in attempt to get them to settle lawsuit could not support RICO claim). Indeed, Ronwin admitted in the courts below that he never paid the amount Allstate invoiced for renewal of his policy, and that Allstate withdrew the invoiced amount when he reiterated that he had decided to cancel the policy and would not pay the premium.

In any event, the injuries that Ronwin has alleged simply are not the type that RICO was designed to prevent. RICO's purpose is to thwart organized criminals' invasions and acquisition of legitimate business enterprises and property. Thus, Congress intended it as a means to combat organized crime, not to provide

every tort plaintiff a federal cause of action and treble damages. *See Oscar v. Univ. Students Co-Operative Assoc.*, 965 F.2d 783, 785-86 (9th Cir. 1992) (where plaintiff alleged only personal injuries based on allegations that she suffered diminished enjoyment of her apartment, she did not state a viable RICO claim). The unavailability of a federal RICO treble-damages action for personal injuries obviously does not restrict a plaintiff's ability to allege other causes of action, *id.*, although in this case Ronwin lacks a factual or legal basis to state *any* claim against Allstate.

2. Ronwin cannot establish a predicate act of racketeering.

Even if Ronwin could establish standing to bring a RICO claim, his claim fails on the merits for at least two reasons. First, as the lower courts found, Ronwin fails to allege a predicate act of racketeering. Pet. App. at 53. Second, because he cannot allege such an act, he cannot show the pattern of racketeering that RICO requires. *See Sullivan v. Boettcher & Co.*, 714 F. Supp. 1132, 1134-37 (D. Colo. 1989).

With regard to the first reason, a racketeering activity is any act chargeable under several generically-described state criminal laws, any act indictable under numerous specified federal criminal provisions, and any offense involving bankruptcy, securities fraud, or drug-related activity that is punishable under federal law. *See* 18 U.S.C. § 1961(1); *see also Sedima*, 473 U.S. at 481-82. A racketeering activity must be an act that is subject to criminal sanction *in and of itself*. *Sedima*, 473 U.S. at 488.

Ronwin's allegations concerning Allstate's mailing to him of a policy cancellation/renewal premium notice for his auto insurance policy do not remotely describe an act indictable under state or federal criminal laws. Indeed, his allegations concern only Allstate's *compliance* with a Colorado statute requiring Allstate to advise him of the cancellation of his policy. This in no way constitutes "racketeering activity" pursuant to RICO. Ronwin makes a conclusory allegation that Allstate's conduct constituted "mail fraud" simply because Allstate sent its cancellation notice through

the mail. Pet. at 13. But it was not mail fraud for Allstate to mail Ronwin an accurate notice of his policy's cancellation and the premium he would need to pay if he wished to renew it.

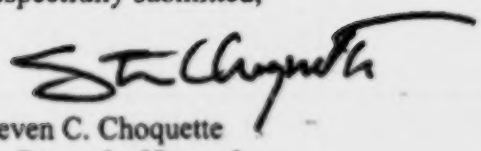
The second reason why Ronwin's RICO claim fails is that to state a valid RICO claim, a plaintiff must allege and prove that a predicate act of racketeering was committed by an "enterprise." RICO broadly defines "enterprise" in Section 1961(4) to include any individual, partnership, corporation, association, or other legal entity and any union or group of individuals associated in fact although not a legal entity. *The alleged enterprise must be a separate, distinct entity from the defendant whose behavior is at issue. Schroder v. Volcker,* 646 F. Supp. 132, 135 (D. Colo. 1986). *See also Brannon v. Boatmen's First Nat'l Bank of Okla.,* 153 F.3d 1144, 1146 (10th Cir. 1998) (an entity that is considered the "enterprise" cannot also be the RICO defendant). Ronwin failed to allege a pattern of racketeering by an enterprise, as he had to do under the statute. Thus, the Tenth Circuit's affirmance of the District Court's dismissal of Ronwin's RICO claim was correct for this reason as well.

Based on the facts and governing law, the lower courts correctly concluded that Ronwin's RICO claim failed as a matter of law, and this Court should also deny the Petition as to the RICO claim Ronwin addressed in the second question presented.

CONCLUSION

For all of the foregoing reasons, this Court should deny the Petition in its entirety.

Respectfully submitted,



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Docket No.: 05-256

SUPREME COURT OF THE UNITED STATES

EDWARD RONWIN, Petitioner,

v.

ALLSTATE INSURANCE CO., et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

REPLY TO ALLSTATE INSURANCE CO.'S BRIEF IN OPPOSITION TO PET. FOR CERT.

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REPLY TO ALLSTATE INS.CO.'s OPPOSITION TO PET.CERT.

Allstate is the only Respondent to submit an Opposition to Pet.Cert. The Colorado Attorney General's office has also declined to submit an Opposition.

I. There are several instances where Allstate has deliberately mislead this Court starting with comment in its Statement of the Case, Oppo. ¶ 1 @3. Thus, Allstate writes: "..[Ronwin] received a cancellation notice in the mail from Allstate shortly after he verbally cancelled his insurance.." The "cancellation notice" was received on June 10, 2002 three weeks after the policy expired by its own terms; there was nothing in existence to cancel, Pet.Cert. 4th Full ¶ @ 10. Furthermore, Allstate forgot to note that the "cancellation notice" threatens "collection" if the premiums demanded for the non-existent policy is not paid, DOC.44, Exh.1; and that in talk with Michael Lanteri, Allstate's agent, after Ronwin received said notice, Lanteri threatened to take Ronwin "to small claims court" if Ronwin did not pay the premiums., ¶ 13 @ 3-4, DOC.1. Also, contrary to Allstate's view in its Statement of the Case, Ronwin was put to significant effort to obtain Allstate's ultimate withdrawal of its false demands, DOC.1, ¶'s 13-20.

Contrary to Allstate's view in its Statement of the Case, the demand for monies not due, using a false notice accompanied by threats of collection and taking to court, which Allstate admits in writing is its procedure, DOC. 1, ¶ 14 and DOC.1, Exh.7, p.2, last ¶, emphasizes the extortionate purposes of said notice, (the alleged "backdating [of] a termination request" is nonsense, Pet.Cert @12, 2nd and 3rd full ¶'s). Compare, too, Magistrate's erroneous comments, Pet.App.53

where contrary to Conley v. Gibson, 355 U.S. 41, 45-46 (1957), the Magistrate determined the facts, rather than accepting the facts as pled by Ronwin and supported with written evidence, DOC.44, Exh.1.

II. Allstate quotes this Court's Rule 10 and claims that no part of same applies to this case, Oppo. @4-5. It is suggested that Rule 10(c) does apply since this case presents important questions of federal law that ought to be settled by this Court, Questions Presented, Pet.Cert. 1.

111. Allstate argues that disposition of cases without oral argument is not unconstitutional, Oppo. 5-7. In support, Allstate cites several cases, Oppo. 5-7, and rules whose text it sets out, Oppo. 2-3. While these rules, (Fed.R.Civ.P.78; App.R.Civ.P.34(a)(2) and Colo.Dist.Ct.Local R. 7.1(G)), allow federal courts discretion to allow or deny oral argument, such rules do not, per se, trump the 1st Amendment right to petition [courts] for redress of grievances, which right implies a full and fair determination of presented grievances, nor, per se, trump Amendment 7's right to demand a jury to determine the facts of a case, (a jury was demanded, DOC.1 @1), nor, per se, trump the 5th and 14th Amendment rights to due process and equal protection.

In this action the Court of Appeals in dismissing the case ordered Ronwin to show cause why he should not be sanctioned for filing a frivolous appeal, Pet.App. @23-25, (an error was made in retyping the last few words of the court's order wherein Ronwin was ordered to show cause). In response to the order to show cause, Ronwin wrote that the Court of Appeals affirmed an absurd, impossible and unconstitutional interpretation of CRS § 18-9-111(1) taken with sub§(f), said Response @ 2; supported and approved a

criminal act by SNYDER, said Response @ 5; that the panel members failed to discern the unconstitutionality of CRS 10-4-607, said Response @ 7-8; that the panel members supported and approved two, separate criminal rackets, thereby displaying "bad behavior,"said Response @ 10; totally misjudged every aspect of Ronwin's positions, said Response @ 12; and that the denial of oral argument resulted in total denial of justice to Ronwin, said Response at @ 13-14. The pertinent statements of the foregoing portions from Ronwin's Response to Order to Show Cause are reproduced in the Appendix herein.

The Court of Appeals discharged the Order to Show Cause, Pet.App. @ 25-26 and Pet.Cert @ 18-19; thereby recognizing that the complaint and the appeal was not frivolous.

Fed.R.Civ.P.12(b)(6) is held to require that the judge take all facts pleaded in the Complaint as true and look upon them with favor, Conley, supra, 355 U.S. @ 45-46. Ronwin pled the criminal action of Snyder which worked up Nash to a frenzy which Chief Harrison admitted to Ronwin he had heard, Pet.Cert. @ 15-18. The facts of Snyder's lying to Nash, which so ignited Nash's anger and actions are undeniable; yet, the Magistrate held Snyder's lies to be "nothing more than to telephone the police with a complaint about [Ronwin]," and to be "..the mere furnishing of information to police officers..," Pet.Cert. @ 20; Pet.App. @ 58. Ronwin's facts on Snyder, as on almost all facts pled in the complaint were not held as true and looked upon with favor by the Magistrate, which posture met with approval by the Dist. Judge and the Court of Appeals. Yet, oral argument could have averted that wrongful result.

When a rule of court, such as the allowance of discretion

on whether to allow oral argument, can result in denying a full and fair determination of a complainant's petition for redress of grievances or where the court decides the facts thereby denying the constitutional demand for a jury, as done herein without hearing witnesses, without discussion of physical evidence, without allowance of discovery and other features of due process, the rule must fall or be so amended as to prevent the violations of citizens' constitutional rights. That Congress has given the courts authority to grant or deny oral argument, Oppo. @ 6, does not trump said constitutional rights. Neither is it sufficient to argue, as does Allstate, that denial of oral argument is merely a matter of separating "frivolous" cases from "meritorious" ones, Oppo. @ 6. In fact, the belated recognition by the Court of Appeals that Ronwin's action was not frivolous, above @ 3, reflects the abuse resulting from the total refusal to hold oral argument on any aspect of this case in the courts below.

In Oppo. @ 6, Allstate misreads the purpose of Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 1020 (1970), on oral argument and appearances before a judge. Primarily, we don't judge cases on their points of fact, we judge cases on their points of law. See Ronwin's explanation, Pet.Cert @ 9-10.

IV. Preliminarily, and contrary to fn.2, Oppo. @ 7-8, the state law claims are comprehended within Question 1 Presented for Review, Pet.Cert @ 1.

A. Allstate attempts to cloth its "cancellation notice" with validity and also with absolute immunity allegedly provided by CRS § 10-4-607, Oppo. @ 8-9. As noted in Pet.Cert. @ 14-15, said notice can only apply if said notice were valid; merely putting the words, "cancellation notice" on a docu-

ment does not make it such notice. In this case, Allstate's notice cancelled nothing because no policy was in existence when it was sent to Ronwin, Pet.Cert. 4th full ¶ @ 10 and above @ 1.

Further, no immunity accrues to insurers even for valid cancellation notices because CRS § 10-4-607 is unconstitutional, Pet.Cert. @ 14-15.

Allstate deliberately misleads this Court when it writes that, "..the lower court's dismissal of all of Ronwin's state law claims on grounds of qualified immunity was correct...," (emphasis supplied), Oppo. @ 11. Yet, in its Motion to Dismiss, Allstate claimed that it is "...absolutely immune from all of Ronwin's...claims," (emphasis added), Heading of Sec. II.B, DOC. 37; and, the Magistrate declared in capital letters upon the "ABSOLUTE IMMUNITY FOR INSURANCE COMPANIES IN REGARD TO STATE LAW CLAIMS," Pet.App. @ 42.

B. Another of Allstate's deliberate efforts to mislead this Court is found in Oppo. @ 9, where Allstate argues that under CRS § 10-4-604(1), (see Appendix herein for text), an insurer "shall not refuse to renew a policy of automobile insurance unless the company provides thirty day's advance written notice of its intention not to renew," (emphasis added). The statute clearly does not apply under the facts of this case and does not make Allstate's cancellation notice a valid document. Ronwin ordered non-renewal before Allstate's policy expired, Pet.Cert. 4th full ¶ @ 10. The notice was received on June 10, 2002, above @ 1. Further, this is not a case where Ronwin demanded renewal and Allstate refused; rather, Ronwin ordered non-renewal regardless of what Allstate might have wanted! (DOC. 44 @ 6, ¶ 9).

If Rule 11 means anything, this Court should apply it to Allstate's deliberate efforts to mislead!

C. Contrary to Allstate's posture, Oppo. @ 10-11, the basis for the unconstitutionality of CRS § 10-4-607 is set forth in Pet.Cert. @ 14-15. That Ronwin raised the issue in the Tenth Circuit does not deny its admission in this record since the Tenth Circuit did not exclude the argument; rather it, in effect, ruled upon it, saying, "...Having reviewed the briefs, the record, and the applicable law pursuant to these standards, we conclude that the district court correctly decided the case..." Pet.App., last ¶ @ 24.

Allstate's pointing to the situation where qualified immunity is granted to private agencies and committees, Oppo. @ 10-11, does not support the absolute immunity grant of CRS § 10-4-607 to insurers or even to the Colorado Commissioner of Insurance.

D. Allstate argues that Ronwin suffered no injuries of a type RICO was designed to prevent, Oppo. @ 12. Ronwin discussed some of his injuries and efforts caused by Allstate's extortionate racket which employed the mails, DOC.44 @ 4 and actually suffered additional injuries and monetary costs. Further, Ronwin's time is a property, (every employee sells his or her time), and same is lost forever. Much of Ronwin's time was taken up by Allstate's racket, DOC.44 @ 14. Furthermore, there is no floor on the degree of injury that justifies a RICO claim. Thus, as little as $250 and lost opportunity for better mortgage terms satisfied the injury requirement as stated in Ferleger v. First American Mortg. Co., 662 F.Supp. 584, 589 (N.D. Ill. 1987), (DOC. 44 @ 14-15.

E. In arguing that Ronwin cannot show a predicate act of racketeering, Allstate alleges that it merely complied "with a Colorado statute requiring Allstate to advise [Ronwin] of the cancellation of his policy," Oppo. @ 13, last ¶. Aside from the fact that no one can cancel a non-existent policy, it is shown above at 5 that said statute, CRS § 10-4-604(1), does not apply. As to Ronwin's policy, Allstate's obligation was to honor Ronwin's order that the policy would expire by its own terms on May 23, 2002 and not be renewed, without any false notices, demands for monies not due and without threats of collection or taking to court for the monies not due.

As a second point Allstate argues that Ronwin must "allege and prove that a predicate act of racketeering was committed by an 'enterprise'", Oppo. @ 13. The predicate act of racketeering in this case is the continued practice, admitted by Allstate in writing, DOC 44, Exh. 7, p.2, last ¶, that if an insured informs Allstate that he/she/it will not renew a current policy and refuses to name a replacing insurer, Allstate automatically sends its alleged cancellation notices which, as above @ 1, are extortionate in intent and which are sent by the mails. The enterprise is the management and lower personnel of Allstate who do the work of the racket, e.g., Kathy Thomson, the Allstate Denver, CO, customer care manager, who wrote Exh. 7 and discussed the racket with Ronwin; and Lanteri, the Allstate agent, on the policy, (DOC.1, ¶'s 13-14 @ 3-4; DOC. 44 @ 4 and Sec. 19(a) to 19(j), incl., @ 11-14), wherein it is also noted that an enterprise is an "ongoing organization," U.S. v. Turkette, 452 U.S. 576, 583 (1981); "even though not a legal entity," U.S. v. Coonan, 938 F.2d 1553, 1559 (2nd Cir. 1991). Also, not just upper management but lower personnel can operate an enterprise, Reeves v. Ernst and Young, 507 U.S. 170, 184 (1993). The

corporate/employee owner, a natural person, is distinct from the corporation itself which has a different legal status and an employee who operates an unlawful RICO pattern uses the corporation as a vehicle even if not the sole or any owner, Cedric Kushner Promotions, Ltd. v. King, 553 U.S.__, 121 S.CT. 2087, 2091-2092 (2001). Thus, Lanteri and Thomson, and other Allstate personnel who may be identified by discovery are in the enterprise complained of in this case.

F. Lastly, Allstate presents questions for review, Oppo. @ 1, which are deliberate distortions of the questions presented for review by Ronwin, Pet.Cert. @ 1.

CONCLUSION

Based on the arguments in Pet.Cert. and herein, it is urged that this case be accepted by this Court.

Edward Ronwin, Petitioner

APPENDIX FOLLOWS

Pertinent portion of text of CRS § 10-4-604(1):

No insurer shall refuse to renew a policy unless such insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew...

Excerpts from Ronwin's Response to Order to Show Cause

in the Court of Appeals as referred to herein:

At p. 2: "By the Panel's affirming the court below, JUDGMENT, p. 2-3, the Panel has adopted an absurd, impossible and unconstitutional interpretation of the pertinent sections of CRS § 18-9-111(1)taken with sub§(f)".

At p. 5: "Where does this leave the Panel members? It leaves them in the posture of supporting and approving a criminal act by SNYDER,"..(emphasis in original).

At pp. 7-8: "Odd that the Panel members did not discern the danger of CRS § 10-4-607, (and other similar statutes that the Colo. Legislature might conceive), to the welfare and constitutional rights of American citizens." (Parenthetical comment in original).

At p. 10: "Once again, (twice since the RICO claims are separate), the Panel Members by promulgating JUDGMENT place themselves in the position of supporting and approving two, separate criminal rackets; thereby displaying "bad behavior," as discussed above at pp. 4-5." (Parenthetical comment in original).

At p. 12: "In view of what has been presented herein, and in the record by RONWIN, it is simply astounding that Panel Members with presumably years of experience as judges could so totally misjudge every aspect of RONWIN's position..."

At pp. 13-14: "At any rate, the bottom line in this action, is that the denial of all oral argument has resulted in a total denial of justice to RONWIN..."